



**IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION**

CAUSE NO: FSD 227 OF 2018 (IKJ)

BETWEEN:

FORTUNATE DRIFT LIMITED

Plaintiff

AND

CANTERBURY SECURITIES, LTD.

Defendant

IN COURT

Appearances:

Ms Katie Pearson, Claritas Legal Limited, for the Plaintiff

Mr Ben Tonner KC and Ms Sally Bowler, McGrath Tonner, for the Defendant

Before: The Hon. Justice Kawaley

Heard: On the papers

Draft Ruling Circulated: 7 September 2023

Ruling Delivered: 14 September 2023

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Cross-applications by plaintiff and defendant for enforcement and stay of previous Information Order- partial compliance- reasons for non-compliance-need for proportionate approach- jurisdiction to make ancillary orders to ensure effectiveness of post-judgment enforcement of freezing orders-Grand Court Act (2015 Revision), section 11

REASONS FOR DECISION**Background**

1. The Defendant's case has taken a series of unfortunate steps over the last few months which have resulted in the Court:

(a) being unable to place any reliance on certain aspects of its evidence relating to the location of the proceeds of sale of the YRIV shares it formerly held (subject to certain contingent security obligations) on behalf of the Plaintiff; and

(b) being satisfied that the Defendant is the sort of litigant which is not embarrassed to engage in blatant acts of asset dissipation in circumstances which constitute a serious abuse of the processes of this Court.

2. The Plaintiff's 3 May 2023 Summons seeking a Freezing Injunction was granted in part on 22 May 2023 ("Freezing Order"). The application for supplementary disclosure was adjourned to trial. Shortly after the end of the trial, the Court made what has been referred to as the Information Order initially on 16 June 2023 as subsequently amended. For present purposes, the Order relevantly provided as follows:

"1. The Defendant shall provide the Plaintiff's attorneys (who may share the documents with the Plaintiff's other legal advisers) with the following documents by 4pm on 20 June 2023:

1.1. Bank account statements showing the location of the Proceeds from 6 December 2018 until either:

(a) the date that the Proceeds or part thereof left the Defendant's control or, to the extent that the Proceeds remain in the Defendant's control;

(b) the date of the last available statement(s). For the avoidance of doubt, such statements shall be statements of the bank account(s) in which the Proceeds have stood and/or are presently standing as a credit balance with the financial institution(s) at which the bank account(s) is (are) held, and shall not include merely the statements of Canadian Escrow Company Ltd and/or any other custodian used by the Defendant as a custodian of the Proceeds;

1.2 A screen shot showing the current location, precise value and registered custodian of the Proceeds insofar as those Proceeds remain in the Defendant's control; and

1.3. An affidavit sworn by a director of the Defendant within the jurisdiction of the Court confirming the accuracy of the documents referred to sub-paragraphs 1.1 and 1.2 above.”

3. As the Defendant's evidence was that the information sought under paragraph 1.1 was both not within its direct control and embraced a long period of time, it was understandable that compliance might be problematic. The same did not apply to paragraph 1.2 as the Defendant's evidence was that there were identifiable liquid assets held in an account for the Defendant's own benefit.
4. On 30 June 2023 I granted the Defendant an extension of time until 7 July 2023 to comply with the Information Order. It failed to meet the extended deadline it had sought or to draw up a formal Order in relation to the extension granted. By Summons dated 7 July 2023, the Defendant sought a further extension of time until 21 July 2023 but only belatedly supported the application with sworn evidence. On 17 July 2023, the Plaintiff filed its Unless Order Summons to enforce compliance with the Information Order. A Case Management Order was made on 18 July 2023 granting the Defendant the extension of time sought under its Summons.
5. Also on 18 July 2023, the Defendant filed the Fourth Winczura Affidavit which primarily sought to vary the Information Order by staying paragraph 1.1 without challenging its obligation to comply with paragraphs 1.2 and 1.3. It was hoped that the screenshot would be received and served “*in the*

next few hours". If the stay sought was not granted, an extension of time for compliance with the entire Information Order was sought until 28 July 2023. This deadline came and went without any compliance. However, the Fifth Winczura Affidavit dated 25 July 2023 explained that Canadian Escrow were reluctant to supply the screenshot because of aspersions previously cast against them by the Plaintiff and averred:

"8. In these circumstances, mindful of reassuring the Court that there are sufficient assets that could satisfy a judgment should the need arise, I have taken the additional measure of setting aside assets equivalent in value to the assets held by Canadian Escrow Ltd (being approximately US\$15.5 million) and can now give discovery to the Plaintiff and the Court confirming the precise value and location of those assets. I note that this is in addition to the assets held by Canadian Escrow whom I still hope to persuade to cooperate with my inquiries.

9. Accordingly, I attach at page 1 a screenshot 2 which confirms the precise value 3 and location of a treasury bill purchased by Canterbury's trader, Canaccord Genuity Corp, on behalf of Canterbury on 24 July 2023 (the 'Screenshot')."

6. What was decidedly odd about this evidence was the implication that the Defendant had no right to compel its own agent to supply a screenshot of the Defendant's own account and the implausibility of an agent managing a client's account being reluctant to comply with such a straightforward request. The suspicious bystander might at this early juncture have raised an eyebrow quizzically and wondered whether or not the supposed Canadian Escrow funds were actually there.
7. In what appeared to come close to a tacit acknowledgment of these obvious concerns, the Defendant offered what I regarded as a voluntary, informal undertaking to ensure that sufficient identifiable assets existed to meet any judgment the Plaintiff might obtain. Interestingly, this 'reasonable responsible litigant' proposal came at a time when the Court was considering its decision on the Unless Order Summons. On 2 August 2023, the Defendant filed the Sixth Winczura Affidavit sworn on 29 July 2023 explaining the latest attempts which had been made to comply with the Information Order. A 28 July 2023 letter to Canadian Escrow referred to the Defendant as having "*recently requested*" a screenshot of the "*Escrow Assets*" by 28 July 2023 at the latest in compliance with the Information Order. The initial request was apparently repeated with no hint that Canadian

Escrow was obliged to meet such a simple client request which would, in the ordinary course of modern digital affairs, take very little time to comply with.

8. The Plaintiff's response was to file a Summons before 9am on 9 August 2023 seeking to freeze the Treasury Bill. Later that day, a draft of the Court's Judgment, allowing the Plaintiff's main claims, was circulated to counsel for editorial comments. This application for further freezing relief was disposed of, in summary, in the following way:

- (a) on 10 August 2023, McGrath Tonner communicated the Defendant's proposal that the Treasury Bill should be frozen in place of the Canadian Escrow funds;
- (b) on 11 August 2023, Claritas argued that in light of the draft Judgment there was no justification for releasing any funds and so the Defendant's proposal should be rejected, and the additional freezing order sought should be granted forthwith subject to leave to vary being granted to the Defendant, if necessary. I directed that the proposed form of order be submitted to McGrath Tonner for comments;
- (c) on 14 August 2023, an unsworn version of the Seventh Winczura Affidavit responding to the Plaintiff's Unless Order Summons was filed. The Plaintiff's counsel's emailed response later that day reiterated its request for freezing relief in relation to the Treasury Bill;
- (d) on 15 August 2023, when I was due to commence a 2 day hearing on another matter, my Personal Assistant, pursuant to my request, contacted McGrath Tonner for comments on the draft order. I was keen to ensure that their right to be heard was respected. The response was that it was not agreed but that comments would be provided as "*soon as possible*";
- (e) on 16 August 2023 at 2:52 pm, I instructed my Personal Assistant that if no comments or a request for more time to comment had been received, the draft order should be "*finalised today*". Shortly thereafter I was forwarded the unsworn version of the Eighth Winczura Affidavit which averred that the Treasury Bill should not be frozen because it would be disproportionate to do so in light of the Plaintiff's likely scale of recovery. It was indicated that Canadian Escrow had refused to supply the screenshot. I decided

to take time to consider this Affidavit after I had concluded my other hearing, rather than freezing the Treasury Bill forthwith;

- (f) on 17 August 2023, Claritas responded to the Eighth Winczura Affidavit. I decided to grant the Further Freezing Order, a sealed version of which was emailed to counsel at 12:37 pm that day with the following summary reasons:

“The Judge has granted the Injunction Order in terms of the draft submitted by the Plaintiff in relation to the Treasury Bill. He will afford the Defendant a final chance to comply with the existing Information Order before considering the need to make a further Information Order.

Until such time as the Court has evidence before it confirming the existence of the Canadian Escrow funds (or explaining their non-existence), it is premature to consider the Defendant’s arguments about the necessity for and the commercial impact of freezing two separate funds.

The present Injunction Order is explicitly made without prejudice to the Defendant’s right to apply to vary the original Injunction Order on commercial hardship grounds. Obviously, such an application cannot be entertained when the Defendant continues to be, inexplicably, in flagrant breach of the various iterations of the 16 June 2023 Information Order”;

- (g) the trial Judgment was delivered and circulated later the same day. On 18 August 2023, McGrath Tonner emailed the Court to advise that, *inter alia*: *“Canterbury informed us upon the making of yesterday’s order that the Treasury Bill was sold by Canterbury prior to the order made yesterday, and that Canterbury had acquired the assets detailed below in its place.”* A *“Comfort Letter”* dated 17 August 2023 confirming the existence of the alternative assets (Class B Preference Shares in Thinkbox Atlas Investments Limited) and their value was also attached. Things were getting curiouser and curiouser;
- (h) on 24 August 2023, McGrath Tonner supplied the Court with a Legal Audit Letter also dated 17 August 2023 from RSM Spain which apparently confirmed the value of the

Class B Preference Shares registered in the Defendant's name as being CAN\$21 million;

- (i) on 5 September 2023, the Final Order giving effect to the 17 August 2023 Judgment was perfected. The Plaintiff's breach of fiduciary duty and contract claims were substantially granted, subject to a further hearing to determine the alternative claim in conversion and the entitlement to and/or quantum of equitable and other compensation. The Plaintiff was as of this date on any realistic view a substantial judgment creditor of the Defendant.

The present applications

9. By a Summons dated 25 August 2023 (supported by the Second Coleman Affidavit dated 25 August 2023-the Plaintiff's "Injunction Summons"), the Plaintiff sought an Order (after consideration of the application on the papers) in the following substantive terms:

"Restraining Order"

1. *Within 3 days of this Order being made the Defendant shall pay the sum of US\$15,801,626.72 (being the value of the Treasury Bill) into an interest-bearing bank account held with a first-class bank in the Cayman Islands in the name of McGrath Tonner (the Frozen Sum).*
2. *Within 24 hours of the payment of the Frozen Sum to McGrath Tonner in accordance with paragraph 1 above, the Defendant shall provide the Plaintiff with a screenshot or bank statement revealing where the Frozen Sum is held. That screenshot or statement shall reveal the name and address of the bank as well as the account number in which the Frozen Sum is held and show the Frozen Sum standing as a credit balance on the account.*
3. *The Defendant shall provide such further screenshots or bank statements showing the location of the Frozen Sum as the Plaintiff shall reasonably require thereafter, and in any event the Defendant shall provide screenshots or bank statements evidencing the location of the Frozen Sum at the end of each calendar month.*

4. *The Frozen Sum and any interest accruing thereon (or any part thereof) shall not be paid out except by order of the Court in these proceedings or with the written consent of the Plaintiff and the Defendant.*

5. *Any application made by the Defendant to vary this order shall be made on at least 7 days' notice to the Plaintiff.*

6. *For the avoidance of doubt, the terms of this Order set out above are to replace the obligations placed upon the Defendant by paragraphs 1-3 of the 17 August 2023 Order. The Defendant is permitted to sell any assets which replaced the Treasury Bill in order to provide the Frozen Sum but is otherwise not permitted to deal with those assets in any way inconsistent with the terms of the 17 August 2023 Order.*

7. *For the further avoidance of doubt, nothing in this Order shall vary in any way whatsoever the proprietary freezing order of the Court made on 22 May 2023 and the various Orders of the Court (the Information Orders) requiring the Defendant to give discovery in relation to the Proceeds of Sale of shares in YRIV sold by the Defendant without authority on 6 and 7 December 2023."*

10. Minor modifications to the latter part of the draft Order would be made later. Notably, paragraph 7 would be amended to stay the Information Order obligations until the Relief Hearing, once paragraphs 1 and 2 had been complied with; and indemnity basis costs were also sought.
11. By Summons dated 28 August 2023 (supported by the Ninth Winczura Affidavit dated 31 August 2023-the Defendant's "Stay Summons"), the Defendant sought an Order (after consideration of the application on the papers) in the following terms:

"1. That further compliance by the Defendant with the Information Order dated 16 June 2023 (as varied) be stayed until the Court has heard the parties' submissions on quantum and equitable relief."

12. These two Summonses raised two key questions:
 - (a) whether the Defendant should be ordered to secure its obligations as a judgment debtor by paying an equivalent cash amount to the security it had agreed to hold for these purposes into an account controlled by its attorneys; and/or

- (b) whether all further compliance with the Information Order should be stayed on the basis that no further compliance could reasonably be required on the Defendant's part at this stage.

Findings: Merits of the Defendant's Stay Summons

13. At first blush, it appeared to be a remarkable display of audacity for the Defendant to have the temerity to seek to stay the Information Order which it has so significantly failed to comply with. However, the Ninth Winczura Affidavit made the following notable averments in respect of its attempts to comply with paragraph 1.1 of the Information Order:

- (a) it was clear that the Plaintiff had obtained certain information already from Hampton, but it had not been entirely transparent about what it had received;
- (b) further information received by the Defendant was exhibited ("*two pdf documents: the first contains investment portfolio statements for Canterbury's 4HI058 account with Hampton for the period of 30 June 2018 to 30 November 2020, and the second contains investment portfolio statements for Canterbury's 4HI059 account with Hampton for the period of 31 December 2018 to 31 March 2021*");
- (c) because of the way in which broker-dealers conduct business, the "*bank statements*" the Defendant was ordered to produce did not in fact exist. The relevant "*custody and trade statements*" had already been disclosed.

14. The Plaintiff cannot credibly challenge (a) nor deny that some compliance has now occurred. It has not raised any dispositive response to points (b) and (c). Technically, the Court has not ordered directions for responsive evidence, but the Plaintiff's Information Summons has effectively been dealt with on the papers on a rapidly rolling basis through correspondence with the Court. This approach is not generally to be encouraged, but it has served to facilitate economy and expedition in relation to interlocutory aspects of this case which could easily exhaust the Court's resources to a disproportionate extent. All the Defendant seeks is a stay until the hearing on compensation and equitable relief.

15. In the exercise of my discretion, I found that further enforcement of paragraph 1.1 of the Information Order should be stayed until the conclusion of the hearing on compensation and equitable relief.
16. The position as regards the application to stay further enforcement of paragraph 1.2 of the Information Order would potentially have been quite different, but for the decision explained below in relation to the Plaintiff's Injunction Summons. I ultimately considered that to be an application for ancillary relief to reinforce the efficacy of the pre-judgment Freezing Orders in the current post-judgment phase of the present proceedings. Because of the way in which that application was disposed, I found that there was no further need for compliance with the second main limb of the Information Order.
17. I reached this conclusion despite the fact, rather than because of the fact, that the Defendant has substantially failed to comply with paragraph 1.2 of the Information Order since 16 June 2023 in that:
 - (a) it has failed to produce a screenshot of the Canadian Escrow Ltd account which it has sworn holds the proceeds of sale of the Plaintiff's YRIV shares; and
 - (b) it has failed to produce any or any credible evidence that it has made *bona fide* attempts to compel Canadian Escrow to provide a screenshot of the Defendant's own supposed account, either promptly or at all. In summary:
 - (1) it was averred in the Third Winczura Affidavit dated 23 June 2023 that Canadian Escrow Ltd. "*have confirmed that a statement confirming the current location, precise value and registered custodian of the funds they hold in escrow and to this court's further order can be provided in compliance with paragraph 1.2, and I am expecting to receive that statement by Monday 26th or Tuesday 27th June*";
 - (2) it was next averred in the Fourth Winczura Affidavit dated 18 July 2023 that the affiant was "*awaiting a screenshot from Canadian Escrow Ltd recording the banking institution (current location), the precise value and the registered custodian of the Proceeds that I am able to verify to this Court remain in CSL's control. For sake of clarity, those funds are the US\$ 15,500,000 deposited by*

CSL in escrow with Canadian Escrow Ltd, and which are subject to the Restraining Order made by this Court on 22 May 2023”;

- (3) it was next averred in the Fifth Winczura Affidavit dated 25 July 2023 that despite initially indicating they would provide the requested document, Canadian Escrow was now reluctant to do so because it was “*concerned about providing sensitive financial information to the Plaintiff’s attorneys in the wake of the speculative allegations and aspersions made about Canadian Escrow...in Mr Sin’s Twelfth Affidavit*”. The supposed reason for Canadian Escrow’s alleged “*reluctance*” was wholly irrational and served to reinforce concerns about its legitimacy as a business, in that it was reportedly willing to thwart a client’s compliance with a foreign court order on childishly petulant grounds. An alternative form of compliance was, however, proposed by the Defendant, namely the Treasury Bill;
- (4) the Sixth Winczura Affidavit dated Affidavit dated 29 July 2023 exhibited a 28 July 2023 lawyer’s letter to Canadian Escrow which failed to demand production of the information sought or to suggest there were no valid grounds for Canadian Escrow’s non-compliance with previous requests;
- (5) in the Seventh Winczura Affidavit dated August 2023 it was averred that “*Canterbury has now secured a conference call with Canadian Escrow tomorrow, Saturday 12 August 2023, to further encourage them to assist Canterbury comply with paragraph 1.2 of the Information Order*” and the Court would be updated on the outcome of that meeting;
- (6) in the Eighth Winczura Affidavit, no further explanation for the failure to obtain the screenshot sought from Canadian Escrow was proffered. Only the Defendant’s proposal as to an alternative form of compliance was addressed; and
- (7) the Ninth Winczura Affidavit dated 31 August 2023 averred that attempts to obtain the screenshot from Canadian Escrow would continue and exhibited a chasing letter dated 25 August 2023 from McGrath Tonner, again expressed

in terms more consistent with a request for assistance directed to a wholly unconnected third party, than a demand made by a client of its service provider for information to which it was entitled as of right.

18. If Canadian Escrow Ltd. did hold US\$15 million on behalf of the Defendant, the Defendant must be legally entitled to require it to produce the confirmation this Court has required. The allusion made to the company's "reluctance" betrayed the simple truth that no attempt to compel production of the information had ever been made. The alleged basis for Canadian Escrow's reported reluctance (no correspondence from the company has been exhibited) was wholly absurd. Firstly, it was nonsensical for Canadian Escrow to refuse to reveal sensitive information about the Defendant's own funds, if as was represented, they were segregated in an account for the Defendant's sole benefit. Secondly, it seemed farcical for Canadian Escrow to base its apparent decision to deliberately frustrate an Order of this Court to the prejudice of its own client's interests on the grounds that Mr Sin has cast aspersions on its probity. The farce flowed from two obvious considerations:

- (a) firstly, Canadian Escrow's reported obstructiveness, to the understanding of any person of sound mind, would only provide further far more compelling evidence than that already before the Court about Canadian Escrow's probity; and
- (b) secondly, Mr Sin's stated concerns were credible and formed part of the basis of my own decision to grant the Information Order in the first place, a matter the Defendant had actual or constructive knowledge of, even if its escrow agent did not. I expressed my provisional views on that application via email on 19 May 2023 as follows:

"The Judge no longer considers there to be credible evidence as to the security of the location of the assets in circumstances where:

- (a) no one within the jurisdiction of the Court appears willing to depose to the assets' location or their security; and*
- (b) the averments of Sin 12 sworn on 3 May 2023 (paragraphs 47-51, exhibiting apparently credible independent supporting documentation) to the effect that CSL's escrow agent has a chequered recent past is presently unchallenged. It is alleged that Mr Palkowski, a former lawyer (a) has*

been convicted of professional misconduct, (b) ceased practising in the face of other disciplinary proceedings and (c) was publically accused in 2020 by another company of the unauthorised distribution of funds held by the same company (Canadian Escrow Company Ltd.) said to be securely holding the assets in the present case.”

19. Mr Palkowski had signed the Canadian Escrow Letter which the Defendant placed before the Court through Ms Winczura’s Personal Assistant on 2 May 2023 which read as follows:

“Canadian Escrow Company Ltd, a British Columbia, Canada corporation, has an escrow account number [REDACTED] active and in good standing in favor of Canterbury Securities Ltd, with signatory Erin Winczura, Managing Director.

We confirm that the escrow account is holding in trust cash equivalent US\$15,500,000 of value in the name of Canterbury Securities Ltd...”

20. The evidential foundation for the Information Order being made started with this Court’s concerns that (a) no witness had been willing to swear from within this jurisdiction where the assets were and (b) the Defendant had chosen as an escrow agent an entity the probity of which was subject to question based on published, comparatively recent allegations. My initial suspicions about both Canadian Escrow Ltd and the veracity of the Defendant’s evidence about the relevant funds were by mid-August 2023 now stronger than they were in mid-May. This was in light of the inexplicably tortuous route the Defendant’s response to this aspect of the Information Order had followed. Whilst the Plaintiff sought to characterise the Defendant’s conduct as contemptuous, to my mind its non-compliance set off increasingly loud alarm bells about the existence and/or location of the funds supposedly safely held by Canadian Escrow Ltd.
21. In these circumstances (which I elaborate upon further below), the Court could only properly proceed on the assumption that Canadian Escrow Ltd does not in fact hold the funds the Defendant contended the escrow agent holds for its sole benefit. This was on the simple basis that the Court has sought verification of the existence of the relevant funds through granting paragraph 1.2 of the Information Order which the Defendant has for whatever reasons failed to provide. Verification was sought because the Court determined that verification was required. Although I was initially inclined to make the further finding that the funds are not in fact held by Canadian Escrow Ltd at

all, no such finding is actually required for the purposes of disposing of the present applications and so it would on balance be inappropriate to record such findings without a fuller inquiry.

22. It was also not necessary for me to record any formal findings as to whether or not the Defendant's non-compliance with paragraph 1.2 of the Information Order was deliberate. The Unless Order Summons was not before the Court. Because the Plaintiff has understandably railed against what superficially appears to be an obviously deliberate course of contumacious conduct, it is in my judgment necessary to explain why I would in any event be disinclined to view the Defendant's conduct through that legal lens.
23. It was in my judgment inherently improbable that the Defendant would expose itself to contempt sanctions by failing to make any serious efforts to compel Canadian Escrow to produce the screenshot if the funds still existed in the form initially represented to the Court. It was inherently improbable that Canadian Escrow Ltd would expose itself to an unnecessary risk of reputational damage by failing to produce a screenshot of an account it controls for no tangible commercial or other benefit. My primary focus, of course, was on the position of the Defendant which is actually before the Court and the credibility of its own reported account of that third party's position. I reached no firm conclusions as to that third party's actual position. Focussing on the Defendant, therefore, it was impossible to discern any tactical or other benefit the Defendant would have gained from voluntarily electing to expose itself to penalties for contempt of Court at worst and at best provoking the Court. It was more inherently believable that:
- (a) the Defendant would from the beginning of the Plaintiff's injunctive relief campaign want to reassure the Plaintiff and the Court, to which an informal assurance had previously been given by letter from Kobre & Kim to the Court dated 17 April 2020, that the proceeds of sale from the Plaintiff's YRIV shares would be kept "*secure pending the outcome of this litigation*"; and
 - (b) that the Defendant in furtherance of that straightforward tactical objective might have felt obliged to adduce evidence which initially painted the desired picture, but which was not ultimately amenable to 'screenshot proof'.
24. As already noted, I felt unable to reach any positive findings about precisely what the true position was without a fuller inquiry. "*Discretion is the better part of valour*". I concluded that I could not fairly and confidently find that the Defendant had given misleading evidence about the existence

and/or location of the YRIV Shares sale proceeds. However, I did find that in approaching the present applications before the Court, I was entitled to proceed on the assumption that the funds were no longer (if they ever were) in an account held by Canadian Escrow Ltd for the Defendant's sole benefit. This flowed from the indisputable fact that the Defendant was ordered to verify the existence and location of funds and has (for whatever reason) failed to do so in circumstances where the Court was unwilling to accept the Defendant's bare assertions in the relevant respect.

25. How did this analysis bear on the question of the Defendant's application for a stay of paragraph 1.2 of the Information Order? It seemed obvious that it would be futile to insist upon further compliance with paragraph 1.2 of the Information Order. It really mattered not, for present purposes at least, whether this was because (a) the Defendant was deliberately refusing to comply with the Order (the Plaintiff's hypothesis), or (b) the Defendant is simply unable to comply with the Order (my own preferred hypothesis which the parties have not had an opportunity to address). On either hypothesis however, it seems obvious that the Defendant's conduct disentitles it from recovering its costs of its Stay Summons and *prima facie* should be subject to an adverse costs order. If the Defendant has wilfully failed to comply with an Order it is able to comply with, it is guilty of contempt of Court. If the Defendant is unable to comply with the Order, it has filed a series of false Affidavits deliberately misleading the Court.
26. For reasons that are addressed at the end of the Judgment in relation to the Plaintiff's Injunction Summons, I summarily determined that no Order should be made in relation to the Defendant's Stay Summons. An appropriate stay provision could be inserted in the Order drawn up to give effect to the Plaintiff's Injunction Summons and the costs of this Summons could conveniently be dealt with under that umbrella as well.

Findings: merits of the Plaintiff's Injunction Summons

The evidential merits

27. The Plaintiff invites the Court to order the Defendant to convert the security it promised to hold for satisfaction of the Plaintiff's Judgment into cash held within the jurisdiction by the Defendant's attorneys on their client's behalf. It does so on the following main factual grounds set out in its Submissions. Firstly, the background to the application is summarised as follows:

“10. In her fifth affidavit dated 25 July 2023 (Winczura 5) Ms Winczura exhibited at EW-5 a screenshot showing that CSL purchased a US treasury bill for US\$15,801,626.72 on 25 July 2023 (the Treasury Bill).

11. Ms Winczura explained how she (apparently) was unable to make Canadian Escrow co-operate with CSL, and then swore to the following evidence (emphasis added):

‘8. In these circumstances, mindful of reassuring the Court that there are that there are sufficient assets that could satisfy a judgment should the need arise, I have taken the additional measure of setting aside assets equivalent in value to the assets held by Canadian Escrow Ltd (being approximately US\$15.5 million) and can now give discovery to the Plaintiff and the Court confirming the precise value and location of those assets. I note that this is in addition to the assets held by Canadian Escrow whom I still hope to persuade to cooperate with my inquiries.

9. Accordingly, I attach at page 1 a screenshot which confirms the precise value and location of a treasury bill purchased by Canterbury’s trader, Canaccord Genuity Corp, on behalf of Canterbury on 24 July 2023 (the “Screenshot”).

10. For the avoidance of any doubt, I confirm that these assets do not represent any part of the Proceeds (as defined in the Information Order). However, I confirm to the Court that Canterbury holds these assets pending judgment in this matter or further order.’

12. Ms Winczura/CSL well know that CSL’s behaviour in relation to the Proceeds of Sale is a flagrant breach of the Information Order. However the import of Winczura 5 was obvious:

12.1. CSL had purchased a safe, non-volatile asset (a US Treasury Bill) of value broadly equivalent to the funds at Canadian Escrow.

12.2. The Treasury Bill was held through a major, reputable financial institution, Canaccord Genuity.

12.3. CSL proffered this Treasury Bill as an asset against which judgment may be enforced. Further Ms Winczura swore to the fact that CSL would hold it pending judgment or further order.

12.4. Accordingly CSL represented itself as fiscally sensible, holding blue-chip assets in order to comply with judgment against it.

12.5. There was certainly no suggestion that CSL would imminently sell the Treasury Bill or exchange it for some shares in a private company.

13. Ms Winczura/CSL well knew that FDL would immediately seek to freeze the Treasury Bill, which FDL did by Summons dated 9 August 2023. Mr Tonner KC, for CSL, suggested in an email to the Court on 10 August 2023 exchanging the injunction over the Proceeds of Sale/Canadian Escrow funds for an injunction over the Treasury Bill, which was not an arrangement acceptable to FDL. A copy of that email appears at page 2 of Exhibit AC2.

14. The Freezing Order over the Treasury Bill was duly made by the Court on 17 August 2023 (the Treasury Bill Order).

15. ...Accordingly the Order sought, and the Order made, are not limited to the Treasury Bill. The Treasury Bill Order also contained the following paragraphs:

'2. To the extent that the Treasury Bill or any part thereof has been sold or substituted for any other asset, paragraph 1 applies equally to any proceeds of sale thereof or any asset replacing the Treasury Bill currently held by the Defendant.

3. Within 24 hours of this Order having been made, the Defendant shall provide to FDL a screenshot revealing the current location of the Treasury Bill or proceeds of sale thereof or any asset(s) replacing the Treasury Bill currently held by the Defendant.'

16. These paragraphs were drafted by FDL because, despite Ms Winczura's evidence that the Treasury Bill would be preserved, FDL does not trust her or CSL and feared that she

would cause CSL to dispose of the Treasury Bill before an Order was made on FDL's application.

17. FDL was proved correct..."

28. As to why the third (and second alternative) way the Defendant now seeks to comply with the Freezing Order/Information Order is unsatisfactory, the following pertinent submissions are made:

"18.4. It is not at all clear how CSL came to acquire shares in a company, Thinkbox, not offering its shares to the public, but presumably it is connected to CSL and/ or Ms Winczura in some way. This is not an appropriate place for security to be held, especially when judgment has already been entered against CSL.

18.5. FDL is concerned that the purchase of more than US\$15 million-worth of shares in a private company (probably connected to CSL/Ms Winczura) is no more than a ruse by CSL. When the time comes for FDL to seek to enforce the judgment against CSL's assets, CSL may yet be able to declare that the Class B Preferred Shares have lost most or all of their value such that FDL cannot enforce against them. Indeed it is not at all clear what the shares are worth (regardless of how much CSL paid for them). It is not clear whether this was an arms-length transaction, although that seems unlikely.

18.6. In addition, FDL knows nothing of Integral Transfer Agency Inc, or TMXCDS Clearing and Depository Services, or RSM Spain. Following the Canadian Escrow saga, and with very good reason, FDL has no faith at all that service providers used by CSL are bona fide. FDL acknowledges it has no evidence to support such a suggestion save that CSL/Ms Winczura have proved to be dishonest and untrustworthy. However it seems that seeking to enforce against the Thinkbox shares may require separate action in various different provinces in Canada, given that Thinkbox is incorporated in New Brunswick, whereas Integral Transfer Agency Inc and TMX-CDS Clearing and Depository Services appear to be based in Ontario.

18.7. Finally, CSL represented to the Court through Ms Bowler that the Treasury Bill held by Canaccord has been replaced with these Thinkbox Shares. However it appears that evidence is false. The screenshot exhibited to Winczura 5 showed a treasury bill with ISIN

(International Securities Identification Number) of US912797F888. The treasury bill replaced by the Class B Preferred Shares had an ISIN of DE0001135044. In other words, it appears to have been an entirely different security. FDL has no faith that CSL will ever explain this properly even if ordered to do so and is very concerned by CSL, through McGrath Tonner, apparently making false representations to the Court...

19. CSL and Ms Winczura appear, in gross contempt of the Court and FDL, to be determined to play an absurd game of hide and seek with their assets. No sooner do they give the Court a glimpse of where the assets are held, than they sell or move them in such a way that tracing is impossible without full disclosure – which CSL never gives, despite being ordered to do so.

20. It is respectfully submitted that this contemptuous behaviour cannot be allowed to continue. It represents a serious disrespect to the Court’s authority.”

29. The Ninth Winczura Affidavit was seemingly drafted and approved (but not actually sworn) before the Injunction Summons was issued. But McGrath Tonner, in filing the Defendant’s Stay Summons on 28 August 2023, which it invited the Court to deal with on the papers, explained that the Ninth Winczura Affidavit was also being sworn in opposition to the Plaintiff’s Injunction Summons. The Court was implicitly invited to deal with both Summonses without an oral hearing. The broad traverse was that the Defendant was entirely compliant with the Further Freezing Order and the Plaintiff did not need further injunctive protection. The most pertinent averments made, for present purposes, are the following:

- (a) *“32. I also enclose at pages 140 to 141 of EW-9 a letter from RSM Spain (Tax and Legal) dated 17 August 2023 confirming that RSM has concluded its compliance due diligence on the Class B Preferred Shares and the Collateral Bond. The letter confirms in regard to the ITA Letter that Integral Transfer Agency is a member and/or participant of TMX-CDS under its CUID: ITA and, as such, RSM’s letter can be accepted on behalf of TMX-CDS as confirmation of the issuance of 100% Aaa rated collateralized and securitized preferred shares having been registered, affiliated and accepted by TMX-CDS. The letter further confirms that the Class B Preferred Shares are held, registered and accepted to be held in custody by TMX-CDS through its member/participant Integral Transfer Agency on behalf of Canterbury”;*

(b) “34. With regard to the assertion made on FDL’s behalf in Ms Pearson’s email to the Court on 19 August 2023, that Canterbury sold the Treasury Bill to avoid it falling under the scope of the Additional Restraining Order, I wish to make clear that is not correct. In any event, when the Additional Restraining Order was granted on 17 August 2023, Canterbury promptly complied with that Order and confirmed the location and value of the Class B Preferred Shares which were acquired in place of the Treasury Bill to FDL: upon doing so, Canterbury acknowledged to FDL and the Court that the Class B Preferred Shares were restrained”;

(c) “35. In all the circumstances, and in the interests of disposing of all of the remaining issues in dispute between the parties, I respectfully request that this Honourable Court now orders that further compliance by Canterbury with the Information Order be stayed at least until the Court has heard the parties’ submissions on quantum and equitable relief. I consider it to be the most appropriate order in the present circumstances, particularly noting the following:

...

(f) to the extent that FDL has asserted, and continues to assert, a need to trace and restrain ‘the Proceeds’ (as defined in the Court’s Order dated 13 December 2018), as opposed to or in addition to identifying and restraining other assets of equivalent value, this alleged ‘need’ is regarded as disingenuous, unnecessary or further or alternatively inappropriate (at least at this stage of the proceedings) for the following reasons:

(i) FDL’s written submissions dated 9 August 2023 confirm at paragraph 8 that Canterbury’s compliance with the Information Order is needed to ‘protect FDL when it comes to enforce judgment’ (not to trace and identify ‘the Proceeds’);

(ii) the Additional Restraining Order, which Canterbury has complied with, confirms the nature, value and location of restrained assets (namely, the Preferred Class B Shares) (which are equal in value to ‘the Proceeds’ as defined in the 22 May Order);

(iii) it will be Canterbury’s position upon filing its submissions on relief that FDL’s losses (either equitable or contract) do not and cannot exceed the Proceeds of the shares

liquidated on 6 and 7 December 2018 net of all sums owed by FDL to Canterbury (to be assessed), and those sums do not exceed the sums which are already restrained by the Additional Restraining Order;

(iv) to the extent FDL asserts Canterbury's alleged failure to disclose evidence of what it has done with the Proceeds confirms there is a real risk Canterbury will dissipate assets such that FDL is unprotected pending enforcement of a judgment in damages, this is not accepted for the following reasons:

a. Canterbury fully complied with its undertakings given to the Court by the order dated 13 December 2018;

b. Canterbury complied with its assurance given to this Court in Kobre & Kim's 22 April 2020 letter to keep the assets safe pending the outcome

c. I have previously confirmed the reason for my reluctance for Canterbury to provide any further financial disclosure to FDL than is absolutely necessary, and in the context of Canterbury's compliance with the Additional Restraining Order, that both parties are yet to file submissions on relief, and (as detailed below) I fail to see how FDL have established a genuine risk that Canterbury will dissipate assets or has previously dissipated assets, it is Canterbury's position that financial disclosure has been given;

d. in the absence of Canterbury receiving the relevant screenshot from Canadian Escrow, Canterbury volunteered a screenshot confirming the precise value and location of the Treasury Bill and offered to FDL that the Treasury Bill be restrained in place of the Canadian Escrow assets;

e. Canterbury has confirmed the precise value and location of the Class B Preferred Shares bought in place of the Treasury Bill in compliance with the Court's Additional Restraining Order;

f. having served Hampton with a subpoena issued by the Nevada Court on 22 April 2022, FDL received documents from Hampton on or before 30 January 2023 confirming that (i) Canterbury had complied with its 2018 undertaking not to move the remaining YRIV shares

or the Proceeds in its control, and (ii) on 27 April 2020 Canterbury transferred the Proceeds within its control to Canterbury Management Ltd, but took no steps to injunct Canterbury's assets until one month before the trial, and I wish to strongly rebut FDL's repeated suggestion that Canterbury has taken or failed to take any steps since that time justifying allegations that it has or will dissipate assets." [Emphasis added]

30. The Defendant's case based on this evidence may be summarised as follows:

- (a) it has complied with all previous undertakings to the Court and the Freezing Order;
- (b) it has adequately complied with the Information Order and the Further Freezing Order;
- (c) it has done nothing to give rise to grounds for finding that there is a risk of dissipation.

31. I evaluated these points as follows:

- (a) it was impossible to confirm whether or not the Defendant had complied with its informal undertaking to the Court after the December 2018 Injunction was discharged because of its substantial non-compliance with paragraph 1.2 of the Information Order;
- (b) although the Defendant eventually demonstrated adequate compliance with paragraph 1.1 of the Information Order, its non-compliance with paragraph 1.2 made that partial compliance academic. The Court was bound to proceed on the assumption that the proceeds of sale of the Plaintiff's shares are not safely held by Canadian Escrow for the Defendant's sole account. The verification the Court required was not supplied and alternative security had been offered. A litigant does not establish compliance with a Court order by failing to comply with its actual terms and proposing alternative forms of compliance of its own choosing;
- (c) the Defendant's conduct established the clearest imaginable case of a risk of dissipation:
 - (1) the Defendant failed over a period of nearly three months to provide a screenshot confirming the existence of funds over which a proprietary claim is asserted and which it has sworn are safely held for its own account. The reasons for its non-

compliance are entirely unsatisfactory. The Court was now required to assume (for the purposes of the present Injunction Summons) that the funds do not exist; and

- (2) the Defendant had disposed of the primary asset the Plaintiff was seeking to freeze while contesting the application for the Further Freezing Order. That was both a blatant act of dissipation and a gross abuse of the processes of the Court.

32. The abuse of process finding requires some elaboration, in part because it is an alternative way of framing what the Plaintiff characterised as contumacious conduct and in part because abuse of process is a concept intuitively familiar to lawyers but often misunderstood by laymen. In the commercial litigation domain, however, there is a starting assumption that lay litigants are sophisticated and capable of understanding the basic tenets of litigation etiquette through hiring lawyers who will guide them through the process. There is no reason to doubt that the Defendant was appropriately advised in this regard. While some legal constructs may be more abstract than others, the principle which is engaged by the present case is comparatively rudimentary one. Where a litigant chooses to participate in a contested application for injunctive relief, the Court assumes that the respondent agrees to be bound by the outcome of the application and is not inviting the Court to afford the respondent an opportunity to remove the asset the applicant is seeking to freeze from the reach of the Court. Participation in an *inter partes* injunction application by the party sought to be restrained necessarily entails a representation by that party that they will agree to be bound (subject to rights of appeal) by the outcome of the application. That is essentially what occurred in the instant case. Where the respondent to an application for a freezing order wishes to avoid being bound by any order the Court may make, they would normally decline to participate in the application because such participation conveys a clear representation that the party is submitting, for good or ill, to the jurisdiction of the Court in relation to the matter at hand.
33. The Plaintiff emailed the Court with the Injunction Summons on 9 August 2023 and invited the Court to deal with it on the papers. McGrath Tonner complained on 10 August 2023 that the Summons had not been canvassed with the Defendant before it had been filed. It did so in terms which necessarily implied that there was obviously no need for the Plaintiff to seek *ex parte* relief because of a risk of dissipation. It was stated:

“Canterbury would have proposed that an injunction over the \$15m treasury bills be substituted for the present injunction over the Canadian Escrow assets.”

In in nutshell, that is now Canterbury's position in response to FDL's summons.

If the Court is not minded to agree with its proposed solution, Canterbury respectfully requests that FDL's summons be listed for oral argument."

34. The Defendant expressly requested a hearing of the disputed question of whether or not an injunction should be granted over the Treasury Bill alone or the Treasury Bill in addition to the Canadian Escrow Ltd assets. The Defendant's explicit position that the Court should decide the scope of injunctive relief and that its preferred position was that the Treasury Bill alone should be frozen. Claritas rejected the notion of the Treasury Bill only being frozen in light of the draft Judgment which had now been circulated for editorial comments, in an email the following day. It argued:

"We respectfully suggest there is no need for a hearing which will only add cost and delay. Mr Tonner may submit in writing any principled objections to the analysis above. Should the Court consider that it wishes to read or hear written submissions from Mr Tonner we make the following respectful suggestion:

- 1. The order should be entered forthwith on the terms of the draft provided; but*
- 2. CSL may be granted leave to apply to vary it.*

This would reflect the usual approach when a Mareva order is entered ex parte and an inter partes return date follows. It would allow FDL the comfort of knowing that the Treasury Bill is frozen, pending further argument, and enable FDL to inform Cannacord Genuity of that fact. (FDL has been unable to inform any reputable financial institution of the freezing order over the Proceeds of Sale because CSL (contemptuously) has failed to provide information regarding the institution holding the funds.) This approach would also allow Mr Tonner to make his submissions, should he want to, and for the Court then to decide whether the freezing order should continue."

35. I directed Claritas to forward the draft Further Freezing Order to McGrath Tonner to enable the Defendant's attorneys to comment on the application, implicitly rejecting the request for an oral hearing. The draft Order was forwarded on Friday 11 August 2023 at 3.21pm in an email copied to the Court. On Tuesday 15 August 2023 I requested my Personal Assistant to telephone McGrath

Tonner to advise that if no comments were received, the draft Order would be sealed. McGrath
Tonner replied later the same day:

“Whilst the Defendant has considered the points made in Ms Pearson’s email to the Court on Friday 11 August (at 10:36am) on this issue, we confirm that as the draft order is still not agreed, we are preparing to provide the Defendant’s comments on the same today, and we will endeavour to do so soon as possible.”

36. Giving deference to the Defendant’s fair hearing rights, and assuming that it was not a rogue litigant operating outside the parameters of the normal civil litigation rules, I deferred granting the Further Freezing Order. I considered the Eighth Winczura Affidavit, received on 16 August 2023 in unsworn form. The Eighth Winczura Affidavit acknowledged receipt of the Court’s draft Judgment, acknowledged that the Defendant had been willing for the Treasury Bill to be frozen instead of the Canadian Escrow assets, contested the Plaintiff’s assessment of the likely level of compensation it would recover and concluded by opposing the Further Freezing Order on the following summary grounds:

“25...I believe the correct order restraining assets in Canterbury’s possession has already been made, and the Summons should be dismissed.”

37. The Court was being invited, apparently in the usual way, to consider a contested application on the basis that some useful purpose would be served by the deployment of the Court’s resources towards this end. The Court was entitled to assume that the time it was expending to adjudicate the application was not being used by the Defendant to emasculate an Order the Plaintiff might obtain if the Defendant’s position were rejected. I decided to grant the Further Freezing Order on 17 August 2023 after receiving Claritas’ comments on the Defendant’s responsive evidence. Having granted the Further Freezing Order on 17 August 2023 and discovered that the Defendant had already defeated the principal limb of the Order by disposing of the Treasury Bill before the order was sealed, the Plaintiff’s initial suspicions about a risk of dissipation were entirely vindicated.
38. Against this background, it would have required naiveté on a grand scale to view the shares with which the Defendant had chosen to replace the Treasury Bill as security for its obligations as a Judgment Debtor as adequate security. The Comfort Letter and Legal Audit Letter, each issued by unfamiliar entities, provided very little comfort at all. Prior to granting the 22 May 2023 Freezing Order, I was discomfited by the fact that the Defendant had chosen to place funds for safekeeping

with an escrow agent which had concerning antecedents. Adding to this initial concern, Canadian Escrow Ltd (by the Defendant's own account) had since the making of the Information Order been reportedly content (for wholly frivolous reasons) to thumb its nose at this Court's Order in flagrant disregard of its own client's commercial and legal interests. Of course, it bears emphasising that there is no direct evidence of what Canadian Escrow's actual position is in this regard.

39. As I have already recorded above, I decided that I was entitled to assume for the purposes of the Injunction Summons that the funds said to be held by Canadian Escrow simply do not exist in their previously described form, if at all. A litigant that has failed to satisfy the Court about the existence of assets it has contended are available to meet their opponent's proprietary claim is almost by definition a high dissipation risk. On that basis alone, an offer to preserve alternative non-cash assets could not be accepted unless those assets were manifestly secure ones. This is why the initial offer to hold the Treasury Bill as security for any judgment was a reasonable one which the Plaintiff substantially embraced. The withdrawal of that offer, under any circumstances, would have set alarm bells ringing and by itself would support a finding that cash should be paid into an account instead.
40. In the event, the Defendant elected to add to this sorry picture of dishonourable litigation conduct a blatant act of asset dissipation (effectively in the face of the Court). This made the Plaintiff's case for its present relief a factually unanswerable one. In these circumstances 'cash is King'; it was entirely appropriate for the Plaintiff to be granted an Order substantially in the terms of its draft, assuming the Court enjoys the jurisdiction to do so.

Jurisdiction to grant the relief sought

41. The Plaintiff's Injunction Summons assumed the relief sought was within the jurisdictional competence of this Court. No jurisdictional challenge was raised. I nonetheless satisfied myself that no obvious jurisdictional impediments existed. The 22 May 2023 Freezing Order and Further Freezing Order made on 17 August 2023, the same date as Judgment was delivered, now have the enforcement status of post-Judgment Freezing Orders. The Order giving effect to the Judgment was perfected on 5 September 2023. The Court was thenceforth no longer enforcing them in aid of a judgment the Plaintiff might obtain, but now in aid of the Judgment the Plaintiff had actually obtained.

42. The Court was being asked to require the Defendant/Judgment Debtor to pay cash into Court to ensure real-world compliance with post-Judgment Freezing Orders. This application is made in circumstances where the Judgment Debtor has disposed of an asset which was equivalent to cash thwarting the Court's attempts to freeze it through the Further Freezing Order. The Court had found that there is compelling evidence of a real risk that the asset the Defendant has now agreed should be frozen may turn out to have far less value than it is presently said to have, and the efficacy of the Freezing Orders would have been materially diminished.
43. It was ultimately obvious that this Court possessed the jurisdiction to grant the relief sought under the Plaintiff's Injunction Summons under its jurisdiction to make such ancillary orders as may be required to ensure that its substantive freezing orders are rendered effective. The most common illustration of such ancillary jurisdiction is the making of disclosure orders (such as the Information Order made in the present case).
44. In *Arcelormittal USA LLC v. Essar Global Fund Limited and Essar Capital Limited* [2019 (1) CILR 297], in the analogous context of delineating the jurisdiction to make disclosure orders ancillary to freezing orders (or *Mareva* orders), I adopted the following principles articulated by Wallbank J in *UVW v. XYZ*, Eastern Caribbean Supreme Ct. (BVI High Ct.), Case No. BVI HCOM 108 of 2016, October 27th, 2016 (unreported):

“[26] ... In A.J. Bekhor & Company Limited v Bilton the English Court of Appeal by Ackner LJ considered that there must be a power inherent in the Court's statutory power to make all such ancillary orders as appears to the court to be just and convenient to ensure the exercise of the Mareva jurisdiction is effective. The Court there traced the power back to section 25 of the Judicature Act of 1873. A.J. Bekhor was a decision made whilst section 37 of what became the Supreme Court Act 1981 was still in Bill form. It was also a decision at a relatively early stage of development of the Mareva jurisdiction. Thus the juridical bases for the newly articulated jurisdiction called for scrutiny. Ackner LJ considered that the power to grant ancillary disclosure orders did not derive from the court's inherent jurisdiction, nor from the court's procedure rules, but from statute. Griffiths LJ agreed, and postulated the position in wide terms. He stated: 'If the court has power to make a Mareva injunction it must have power to make an effective Mareva injunction. If the injunction will not be effective it ought not be made. (...) [I]t may be necessary to order discovery to make the injunction effective and I would hold that the court has the power to

make such ancillary orders as are necessary to secure that the injunctive relief given to the plaintiff is effective. I therefore agree that a judge does have power to order discovery in aid of a Mareva injunction if it is necessary for the effective operation of the injunction. ' It would seem logical that orders in aid of a freezing order can be made after, and thus separately from, the freezing order itself.' [Emphasis added]

45. The statutory basis for this Court having a jurisdiction which corresponds to that enjoyed by the English courts is section 11 of the Grand Court Act (2015 Revision), which provides:

“11. (1) The Court shall be a superior court of record and, in addition to any jurisdiction heretofore exercised by the Court or conferred by this or any other law for the time being in force in the Islands, shall possess and exercise, subject to this and any other law, the like jurisdiction within the Islands which is vested in or capable of being exercised in England by-

(a) Her Majesty's High Court of Justice; and

(b) the Divisional Courts of that Court, as constituted by the Senior Courts Act, 1981, and any Act of the Parliament of the United Kingdom amending or replacing that Act.”

Relief

46. I accordingly found that the Plaintiff was entitled to an Order in the following terms:

“Restraining Order

- 1. Within 3 days of this Order being made the Defendant shall pay the sum of US\$15,801,626.72 (being the value of the Treasury Bill) into an interest-bearing bank account held with a first-class bank in the Cayman Islands in the name of McGrath Tonner (the **Frozen Sum**).*
- 2. Within 24 hours of the payment of the Frozen Sum to McGrath Tonner in accordance with paragraph 1 above, the Defendant shall provide the Plaintiff with a screenshot or bank statement revealing where the Frozen Sum is held. That screenshot or statement shall reveal the name and address of the bank as well as the account number in which*

the Frozen Sum is held and show the Frozen Sum standing as a credit balance on the account.

3. *The Frozen Sum and any interest accruing thereon (or any part thereof) shall not be paid out except by order of the Court in these proceedings or with the written consent of the Plaintiff and the Defendant.*
4. *Any application made by either party to vary this order shall be made on at least 2 working days' notice to the other party.*
5. *For the avoidance of doubt, the terms of this Order set out above are to replace the obligations placed upon the Defendant by paragraphs 1-3 of the 17 August 2023 Order. The Defendant is permitted to sell any assets which replaced the Treasury Bill in order to provide the Frozen Sum but is otherwise not permitted to deal with those assets in any way inconsistent with the terms of the 17 August 2023 Order.*
6. *Without prejudice to paragraph 2 of this Order, further compliance by the Defendant with the Information Order dated 16 June 2023 (as varied) shall be stayed until the Court has heard the parties' submissions on quantum and equitable relief at the Relief Hearing.*

Costs

7. *Unless the Defendant applies to be heard as to costs by letter to the Court within 14 days, the costs of the present application, the costs of Plaintiff's applications for the 22 May 2023 Freezing Order and the 16 June 2023 Information Order, and the costs of any related interlocutory applications filed by either party after 16 June 2023, shall be paid by the Defendant on the indemnity basis to be taxed if not agreed and payable forthwith."*
47. Paragraphs 1-5 adopt the proposed form of Order ultimately sought by the Plaintiff's counsel. Paragraphs 5 and 6 I modified in the present respects:

- (a) the Plaintiff initially sought continuance of the operative effect of paragraph 1.1 of the Information Order generally, and subsequently sought continuance only until paragraphs 1 and 2 of the present Order had been complied with. I accepted the Defendant's application pursuant to its Stay Summons that further compliance with the Information Order generally should be stayed until the compensation and equitable relief hearing and considered that this should be reflected in the present Order;
- (b) the Plaintiff sought the costs of the present Summons on the indemnity basis. In the interests of economy and expedition, I felt that I should make the conditional decision now that the Defendant should pay all costs relating to injunctive relief on the indemnity basis, including the costs of the Defendant's Stay Summons, to be taxed if not agreed and payable forthwith.

Conclusion

48. For these reasons on 7 September 2023, I granted the Plaintiff's Injunction Summons by way of increasing the efficacy of the Freezing Order dated 22 May 2023 and the Further Freezing Order 17 August 2023.



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