



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

CAUSE NO. FSD 138 of 2023 (MRHCJ)

BETWEEN:

MAARIT OVASKAINEN

PLAINTIFF

AND:

JARI OVASKAINEN

DEFENDANT

IN CHAMBERS

Appearances: Mr. Nicholas Yates KC, and with him, Ms Yvonne Mullen instructed by Hampson & Company, for the Plaintiff, *ex parte*

Before: Hon Margaret Ramsay-Hale, Chief Justice

Decision: 15 June 2023

Written Reasons Delivered: 21 June 2023

HEADNOTE

Civil Procedure - Writ issued seeking to enforce foreign judgment at common law - Ex parte application for freezing injunction - principles on which freezing orders granted - disclosure orders in support of freezing injunction - Grand Court Act section 11 Civil Procedure - Substituted service - whether service impracticable - GCR O.65, r.4(3).

230621 Maarit Ovaskainen v Jari Ovaskainen – Reasons for Decision

REASONS FOR DECISION

Introduction

1. On the 15 June 2023, I granted an Injunction on the application of the Plaintiff, Maarit Ovaskainen, freezing the assets of the Defendant, Jari Ovaskainen, in the Cayman Islands for reasons which I now put in writing.

Background

2. The application arises out of ancillary relief proceedings on divorce in Switzerland between the Plaintiff and the Defendant to whom I shall refer in the judgment as wife (W) and husband (H) notwithstanding they are divorced. I do so for convenience and intend no disrespect to either of the parties.
3. After their marriage, the parties relocated with their children first to London and then to Switzerland. In 2011, W asked H for a divorce. They subsequently entered into an agreement, known as a "*Convention de Divorce*," in November 2012. They then filed jointly for divorce in Switzerland in April 2013.
4. W subsequently discovered that H had not made full disclosure of his assets but had understated them by some USD240 million. Following on from that discovery, W applied to the Swiss court to set aside the agreement on the basis of fraud and fundamental error. The parties became thereafter embroiled in litigation which lasted 10 years and culminated in a judgment of the Swiss Federal Supreme Court dated 10 January 2023 in awarding W the sum of CHF 115,871,422 plus interest at 5% per annum from 31 August 2021 as her share of the matrimonial property.
5. W, thereafter, attempted to enforce the judgment in Switzerland. W's attorneys in Switzerland seized two properties in Switzerland which together are worth CHF12 million more or less. It was later discovered that the properties were very heavily mortgaged, deliberately, it was suggested, to defeat W's efforts to enforce the judgment.
6. A debt collection process commenced by W to enforce the judgment had to be abandoned when H changed his domicile from Switzerland to the Cayman Islands as by the time it was served, H had

changed his domicile to the Cayman Islands. Under Swiss law, debt collection proceedings can no longer be continued if the debtor changes his domicile before the seizure notice is issued.

7. Disclosures made by H in the Swiss Court and inquiries undertaken by W reveal that a Certificate of Permanent Residency was issued to H under section 42 of the **Immigration (Transition) Act** on 20 July 2022 and that a 4-bedroom condominium at the Kimpton Seafire Resort and a luxury motor vehicle are registered in H's name.
8. W now seeks to enforce the judgment of the Swiss Court in the Islands. The judgment cannot be recognised and enforced pursuant to the **Foreign Judgment (Reciprocal Enforcement) Act (1995 Revision)** as the Governor has not by order extended the provisions of the law to Switzerland. The judgment may, however, be enforced at common law, the Court treating the foreign judgment as a debt due from the judgment debtor to the judgment creditor.
9. Such judgments are enforceable where the judgment is made by a competent foreign court, is for a definite sum of money and is final and conclusive.
10. In that regard, I note the decision of Levers J in *Banco Mercantil Del Norte S.A (Grupo Financiero Banorte) v. Cabal Penich* 2003 CILR 343, and to [8] of the judgment where she said this:

“At common law the court will enforce the judgment of a foreign court in a claim in personam provided that the foreign court had jurisdiction over the judgment debtor in accordance with the rules of private international law...

(a) if the judgment debtor was, at the time the proceedings were instituted, present in the foreign country; or...

...

(c) if the judgment debtor was the defendant and submitted to the jurisdiction of the foreign court by voluntarily appearing in the proceedings and contesting them on the merits;...”

11. H was present in Switzerland when the proceedings were instituted and has participated fully in them, contesting the judgments of the Courts below all the way to the Federal Supreme Court on two occasions until the judgment handed down on 10 January 2023 brought the proceedings to a

conclusion. The judgment of the Federal Court is a final judgment making an order making an order dealing capital arising from the “*liquidation of the matrimonial property regime*” as distinct from a maintenance order which may be subject to variation by the foreign court.

12. On 29 May 2023, W duly issued a Writ of Summons seeking to enforce the judgment of the Swiss Federal Supreme Court at common law to recover a debt now due to her which stands at CHF 125,490. 337 including interest up to 9 May 2023 and interest accruing thereafter at the daily rate of CHF15,872.79 as a debt.

This Application

The Freezing Order

13. In this *ex parte* application, W seeks a freezing order in the following terms to preserve H’s assets until her claim on the debt can be determined by this Court:
 - 13.1 An injunction prohibiting the disposal of assets in the draft terms enclosed, including removal of assets up to the value of CHF125,664.938;
 - 13.2 An injunction preventing the disposal charging or diminishing in value of s. 801 Seafire Residence, 45 Tanager Way, more particularly known as WBBN Block 11B Parcels 88H70 and 88H53; and
 - 13.3 The registration of an inhibition against title of the Property pursuant to s 124 of the Registered Land.
14. The application was made on the basis that if the relief were not granted, H would dissipate the assets in this jurisdiction to defeat W’s claim on the debt due to her arising from the judgment of the Swiss Court. This same concern prompted the application on an *ex parte* basis, W contending that if H had notice of the application, he would seek to put his assets out of W’s reach before the application could be heard.
15. Although the application was made pursuant to section 11A of the **Grand Court Act (2015 Revision)** which gives the Court power to grant interim relief in support of *foreign proceedings*, in the circumstances where a Writ has issued out of the Grand Court Registry seeking the judgment

of this Court on the debt created by the foreign judgment, the Court's jurisdiction arises under section 11.

16. Section 11 of the Grand Court Act provides that,

“(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....”

17. Section 37 of the English **Senior Courts Act 1981** relevantly provides that,

“(1) The High Court may by order (whether interlocutory or final) grant an injunction or appoint a receiver in all cases in which it appears to the court to be just and convenient to do so.”

18. W's application was for interim relief ancillary to the Writ, seeking to restrain H, a party to the proceedings, from removing or otherwise dealing with assets within the jurisdiction of the Court, if the Court were satisfied it was just and convenient to grant it.

19. In the recent judgment of the Privy Council in *Broad Idea International Ltd (Respondent) v Convoy Collateral Ltd*, [2021] UKPC 24, an appeal from the British Virgin Islands, Lord Leggatt set out the current practice for granting a freezing injunction at [101] summarized as follows:

- (1) A good arguable case for the payment of a sum of money that will be enforceable through the process of the court;

- (2) The existence of assets belonging to or under the control of the defendant against which judgment could be enforced; and
- (3) A real risk that the defendant will dissipate those assets and the judgment will be left unsatisfied if the order is not given.
20. The authorities are clear that there must be cogent evidence to show that there is a risk of dissipation. As it was put by Doyle J in *Trezevant v Trezevant* (Unrep)10 November 2021 at [19] and [20] adopting the comments of Chadwick P in *AHAB v Saad Investments Company Limited* 2011 (1) CILR 178 at [69], the applicant must provide,
- “solid evidence’ to the effect that, without such relief, there was a real risk that the judgment would not be satisfied by some process of enforcement”* noting that *“...in appropriate cases it is possible to infer the risk from evidence of surrounding circumstances.”*
21. I was satisfied that W has a good arguable case that there is a debt due to her which is enforceable by this Court for the reasons set out at para 11 *supra*. There is no doubt that H holds assets against which the judgment could be enforced, including the assets within the jurisdiction of the Court which belong to H against which W has identified.
22. W’s evidence that H mortgaged properties in Switzerland which could have been liquidated in partial satisfaction of judgment made in favour of W and changed his domicile to put himself beyond the reach of the Swiss debt collection process was evidence from which the Court concluded that there was a very real risk that H would dissipate the assets located within the Cayman Islands, were he not restrained from doing so. By the same measure, it was also established that there would have been a substantial risk that advance notice would defeat the purpose of the order if the application had not been made *ex parte*.
23. In the circumstances, it was both just and convenient to grant the injunction to ensure that any judgment of this Court was not frustrated.

Order for Disclosure

24. Although no application was made for an order for disclosure in the summons, W did seek such an Order in the terms set out in the draft Order at paragraph 9:

“The Defendant must inform the Plaintiff in writing at once of all the Defendant’s assets in the Cayman Islands whether in the Defendant’s own name or not and whether solely or jointly owned, giving the value, location and details of all such assets. The information must be confirmed in an Affidavit which must be served on the Plaintiff’s attorneys within 7 days after this Order has been served on the Defendant.”

25. In *Trezevant’s* case, Doyle J noted at [42] that,

“...it is...well established that when granting freezing orders...the Court also has jurisdiction to grant disclosure orders where necessary to ‘police’ or give effect to the asset freezing order.”

26. Referring to the disclosure obligations in a proposed freezing order Smellie CJ in *Classroom Investments Incorporated v China Hospitals Incorporated and Chine Healthcare Incorporated* (Unrep) 15May 2015, observed at [68] that,

“...the disclosure obligations in the proposed Mareva order (as in the proprietary injunctive order) are also vitally important aspects of a freezing order. Disclosure has long been a standard feature of freezing orders.”

Adding at [69] that,

*“I accept that the imposition of disclosure obligations which really makes the order effective, enabling the plaintiff to see, and if necessary take steps to protect...the assets claimed. As Goff, J. observed in *A v. C* ([1981] Q.B., at 959–960), “without information about the state of each account it is difficult, if not impossible, to operate the Mareva jurisdiction properly.”*

Substituted Service

27. W also applied pursuant to Grand Court Rules, O 65, r.4 for substituted service, *inter alia*, of the Writ and the *ex parte* Order. Her evidence was that H travelled frequently such that there was no way for her to know where he was at any given time. She also asserted that in the same way that he has sought to avoid the judgment of the Swiss Court he would seek to evade service of these proceedings.
28. She sought substituted service by leaving the documents at his Cayman address as well as service on H's solicitor in London whose address H provided for the purposes of the registration of the transfer of to the condominium at the Kimpton.
29. I was satisfied that personal service on H was impracticable and that H would be inclined to evade service to the same extent as he was intent on avoiding the judgment of the Swiss Court. I made the orders for substituted service accordingly, being satisfied that leaving the documents at H's Kimpton residence and serving a copy on his solicitor would succeed in drawing the proceedings to H's attention as required by O.65, r.4(3).

ORDER

30. The Order was made accordingly in terms of the Draft Order. Although H is domiciled in the Cayman Islands, the return date was set for 28 days as those who advise H, and on whom substituted service was ordered, are outside of the jurisdiction.

DATED THE 21 JUNE 2023



Hon. Justice Margaret Ramsay-Hale
Chief Justice