



IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO: FSD NO. 314 OF 2021 (DDJ)

IN THE MATTER OF THE GRAND COURT ACT (2015 REVISION)

BETWEEN: KISHA DEAN TREZEVANT

PLAINTIFF

AND: STANLEY H. TREZEVANT III

DEFENDANT

Appearances: Mr Mark Goodman and Mr Harry Shaw of Campbells LLP for the Plaintiff

Before: The Hon. Justice David Doyle

Heard: 3 November 2021

**Ex Tempore
Judgement Delivered:** 3 November 2021

**Draft Transcript of
Judgment Circulated:** 9 November 2021

**Date Transcript of
Judgment approved:** 10 November 2021

HEADNOTE

Ex parte without notice application for an asset freezing injunction – Interim relief in aid of foreign proceedings under section 11A of the Grand Court Act (2015 Revision) – Cayman assets and risk of dissipation – Recognition and enforcement of foreign judgments – Disclosure Orders – Full and frank disclosure - Service out of the jurisdiction

211110 FSD 314 of 2021 – Kisha Dean Trezevant v Stanley H. Trezevant III – Judgment – Asset Freezing Injunction



JUDGMENT

Introduction

1. I have considered:
 - (1) *ex parte* Originating Summons dated 29 October 2021;
 - (2) the first affidavit of the Plaintiff sworn 29 October 2021 at Hamilton County, Tennessee, USA and exhibit KDT-1;
 - (3) the draft Orders, including the amended draft filed under cover of an email dated today's date, Wednesday 3 November 2021 at 2.10pm;
 - (4) the skeleton argument dated 1 November 2021 and the accompanying authorities;
 - (5) *Miller v Gianne* 2007 CILR 18; and
 - (6) the oral submissions of Mark Goodman who appears for the Plaintiff together with Harry Shaw of Campbells LLP.
2. I am most grateful to the attorneys for their valuable assistance to the Court in respect of this matter.

Background

3. Put shortly the Plaintiff seeks relief from this Court in aid of foreign divorce proceedings (the "Divorce Proceedings") between her and her ex-husband, the Defendant, before the Circuit Court of Tennessee for the Thirtieth Judicial District of Memphis (the "Circuit Court").
4. I have considered the judgments of the Tennessee Court of Appeals dated 25 April 2018 and the judgment of the Circuit Court dated 5 January 2021 (the "Circuit Court Judgment"). The Circuit Court Judgment awarded the Plaintiff various assets, including several located in the Cayman Islands in the name of the Defendant or companies he controls.



5. The Plaintiff says that the Defendant has refused to transfer title to such assets to the Plaintiff and has recently commenced an appeal against the Circuit Court Judgment. The Defendant also seeks to obtain a stay of the Circuit Court Judgment pending the appeal. It is said that the motion for a stay will be determined this Friday 5 November 2021. The Plaintiff says that if the Defendant's motion for a stay is granted there is a very real possibility that the Defendant will seek to dispose of or transfer the assets in the Cayman Islands (namely the real properties and the funds in the bank accounts) and any other assets the Defendant has in the Cayman Islands, and that he will do this to defeat the Circuit Court Judgment in favour of the Plaintiff.
6. It is said that even if the stay is declined there is a risk of what is described at paragraph 6 of the skeleton argument as a *"reactive dissipation by the Defendant ... given the Defendant's pattern of disregard to judicial orders, lying to the Court, and dissipating assets to defeat the Plaintiff's interests.... Notably the Defendant sought to sell two of the Cayman Islands properties in the weeks following the 5 January 2021 judgment..., and the prospect of a last ditch effort by the Defendant to defeat the Plaintiff's rights cannot be ignored or underestimated"*.
7. I should also record that on 5 October 2021 the Tennessee Circuit Court ordered the Defendant *"to absolutely desist and refrain and be enjoined from completing any pending transfers of property awarded to Wife; and from transferring, selling, encumbering or hypothecating any and all property awarded to Wife"*.
8. The attorneys acting for the Plaintiff also say that it is important to note that in the "Findings of Fact and Conclusions of Law of the Final Hearing" of the Circuit Court of Tennessee (5 January 2021) Judge Mary L Wagner ordered that the Plaintiff shall receive *"3. All of the Cayman properties"* (page 35 of the Circuit Court Judgment) and added that *"If any party is aware of any property, including real property, businesses, and bank accounts, not identified on Exhibit A, he or she shall disclose this to the Court and the other party within the next thirty (30) days. Any omitted property that is not disclosed shall be considered undisclosed property. Any undisclosed marital property shall be divided 75% - 25%, with the non-disclosing party receiving 25% and the other party receiving 75%"* (at paragraph 8 on page 41 of the Circuit Court Judgment).



9. It is in these circumstances that the Plaintiff seeks from this Court an urgent *ex parte* without notice order against the Defendant, restraining the Defendant from selling, disposing of, or otherwise dealing with his assets within the Cayman Islands, including certain real property in the Cayman Islands and cash balances held in bank accounts in the Cayman Islands. The Plaintiff also seeks a disclosure order against the Defendant.

Section 11A of the Grand Court Act (2015 Revision)

10. The orders are sought pursuant to Section 11A of the Grand Court Act (2015 Revision). Under section 11A (1) this Court is given jurisdiction to grant interim relief (including interim injunctions such as asset freezing orders) in relation to proceedings which (a) have been or are to be commenced in a court outside of the Islands; and (b) are capable of giving rise to a judgment which may be enforced in the Islands under any Act or at common law.
11. Under section 11A (5) this Court may refuse an application for grant of interim relief if, in its opinion, it would be unjust or inconvenient to grant the application.
12. Section 11A (6) provides that in exercising the power under subsection (1), the Court shall have regard to the fact that the power is (a) ancillary to proceedings that have been or are to be commenced in a place outside the Islands; and (b) for the purpose of facilitating the process of a court outside the Islands that has primary jurisdiction over such proceedings.
13. Section 11A (10) provides that “interim relief” includes an interlocutory injunction.
14. Chief Justice Smellie in *AHAB v Saad Investments* 2007 (2) CILR 788 at paragraph 197 stated:

“Section 11A vests a statutory jurisdiction for the making of freezing and ancillary disclosure orders in aid of foreign proceedings, where it is shown that there is a good arguable case and that there is a risk of dissipation of assets...”



15. Chief Justice Smellie in *Classroom Investments Inc. v China Hospitals Inc. & Another* 2015 (1) CILR 451 referred to *Credit Suisse Fides Trust S.A. v Cuoghi* [1998] Q.B. 818 and quoted the following words of Millet LJ at 827C – 827D:

“Where a defendant and his assets are located outside the jurisdiction of the court seised of the substantive proceedings, it is in my opinion most appropriate that protective measures should be granted by those courts best able to make their orders effective. In relation to orders taking direct effect against the assets, this means the courts of the state where the assets are located; and in relation to orders in personam, including orders for disclosure, this means the courts of the state where the person enjoined resides.”

Determination

Ex Parte Injunctive Relief

16. The first issue to determine is whether this Court should proceed *ex parte* without notice to the Defendant. I endeavoured to summarise the legal position in *Cathay Holdings III LP v Osiris International Cayman Ltd* (FSD unreported judgment, 30 August 2021).
17. In my judgment if notice were given to the Defendant it is likely that he would take action that would defeat the purpose of the Orders sought.
18. In short the giving of notice would or might defeat the object of the application. In the circumstances of this case it is appropriate to proceed without notice to the Defendant.

General Comments

19. Before turning to the other requirements upon which I must be satisfied, I refer to some general comments of Chadwick P in *AHAB v Saad Investments Company Limited* 2011 (1) CILR 178 on 15 February 2011 (before Order 11 rule 1(1)(n) of the Grand Court Rules came into effect but nevertheless some of the comments are of general application). Chadwick P at paragraph 42 indicated that the purpose of asset freezing relief was to ensure that the effective enforcement of a judgment was not frustrated by the dissipation of assets which would be available to the claimant in satisfaction



of the judgment. The court needs to be satisfied of two matters before granting such relief. First, that there is good reason to suppose that the assets to which the freezing order is imposed would become available to satisfy the judgment; and second that there is good reason to suppose that, absent such relief, there is a real risk that those assets will be dissipated or otherwise put beyond the reach of the claimant. There needed to be “*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.

20. In appropriate cases it is possible to infer the risk from evidence of surrounding circumstances. In any event, a risk of dissipation must be shown. Conteh JA at paragraph 104 stated that the jurisdiction: :

“...has as its underlying premise the interest of justice, namely to ensure that a successful claimant is not thwarted by a defendant, or others acting in concert with or by the direction of the latter, through the dissipation of assets which would be available to satisfy the claims of the former. It is never the purpose of the exercise of the jurisdiction to effect a freezing order over assets in the hands or control of a defendant or other third parties to punish or cause unnecessary hardship or to be exercised in vain.”

21. Conteh JA added at paragraph 107 that the grant of such relief by a court “*is an exercise of discretion guided and informed by the facts of a particular case and the primordial consideration whether it is just and convenient to do so.*”
22. I also have regard to the general comments on the nature of the jurisdiction in the recent judgments of the members of the Judicial Committee of the Privy Council in *Broad Idea International Ltd v Convoy Collateral Ltd* [2021] UKPC 24.

Assets and Real Risk of Dissipation

23. I now turn to some of the other relevant factors that the Court must consider. There are plainly assets within the jurisdiction and for the reasons advanced on behalf of the Plaintiff I am satisfied that there is a real risk of dissipation.



24. I note the findings in the Circuit Court Judgment at page 33 that the Defendant has repeatedly refused to abide by court orders. There is reference to the “*Court’s concern that the Husband will disregard this Court’s orders related to the division of property in an effort to defeat Wife’s receipt of marital assets*”. At page 34 the Circuit Court considers “*the proven efforts of the Husband to hide assets*” including “*the overlooked parcels in the Cayman Islands*”. The Circuit Court says that it considers “*this factor as it relates to the Husband’s potential for taking action to defeat this Court’s division of the marital estate*”.
25. There is also the comment at page 2 of the Circuit Judge’s Judgment recording the affirmation of the Court of Appeals: “*6. The husband was guilty of “19 counts of criminal contempt for hiding assets, unlawfully transferring assets, and lying to the court amongst other things” and the resulting sentencing of 55 days of incarceration*”.
26. The report of the judgment of the Court of Appeals of Tennessee included in the bundle also refers to holdings against the Defendant of dissipation of marital assets and “*evidence established that the husband committed criminal contempt by failing to disclose interest of certain real estate*” and “*the trial court acted within its discretion in sentencing the husband to a total of 55 days in jail following conviction of 19 counts of criminal contempt of court*”.
27. Findings of past dissipation and contempt do not automatically equal a present or future “*real risk of dissipation*.” I am, however, satisfied that in the circumstances of this case there is sufficient evidence before the Court to conclude that there is a real risk of dissipation.

Recognition and Enforcement of Foreign Judgments

28. As to the position in the Cayman Islands on the recognition and enforcement of the judgments of the Tennessee Courts it is stated at paragraph 26 of the skeleton that “*Counsel is not aware of any reason why the judgments of the Tennessee courts would not be readily recognised and enforced by a common law writ action in the Cayman Islands.*”



29. Mr. Goodman, with the assistance of Mr. Shaw, has today put some meat on the bones of the skeleton and helpfully referred to Chief Justice Smellie's judgment in *Miller v Gianne* 2007 CILR 18 following *Pattni v Ali* [2006] UKPC 51 and *Pro Swing Inc v Elta Golf Inc* [2006] S.C.R 612.
30. I have also noted the position under Dicey, Morris & Collins *The Conflict of Law* 15th Ed. Rule 42 refers to enforcement of *in personam* foreign money judgments. The position in respect of the recognition and enforcement at common law of non-money foreign judgments is a little less clear.
31. Foreign *in personam* non-money judgments are not enforceable under the Foreign Judgments Reciprocal Enforcement Act (1996 Revision), which does not in any event appear to apply to judgments of the Courts of Tennessee. They can however be enforced at common law provided that the judgment was given by a court with competent jurisdiction, it is final and conclusive and principles of comity require enforcement (see *Bandone v Sol Properties Incorporated* 2008 CILR 301).
32. Enforcement will not be permitted if it is against public policy. Moreover it appears that the courts will not enforce a foreign judgment adjudicating *in rem* on the title to, or the right to possession of, immovable property in the Cayman Islands (see *Tartaglia v. Colonial Dev. Corporation. Ltd* 1996 CILR Note 4) although it appears that the Court can enforce *in personam* judgments concerning such property.
33. I note that the Circuit Court Judgment at pages 34 and 35 provides that the wife shall receive: "3. *All of the Cayman properties*" and at page 37 "*With regard to bank accounts associated with the Cayman Island properties, Husband shall not close the account, but instead add Wife as an owner of said account within fifteen (15) days of this Order. Husband shall not make any further withdrawals from the bank accounts associated with these properties. Thereafter, Wife, as an owner, shall have the authority to remove Husband from said bank accounts.*"
34. I also note that in *Pattni v Ali*, which the Chief Justice followed in *Miller*, the Judicial Committee of the Privy Council (in a case which did not involve immovables) recognised a foreign court's *in personam* determination of contractual rights. Lord Mance at paragraph 26 stated:



“...it has long been accepted in England that an English court may as between parties before it, give an in personam judgment to enforce contractual or equitable rights in respect of immovable property situated in a foreign country.”

35. Counsel did not refer the Court to any statutory basis for the recognition and enforcement of the Circuit Court Judgment and I am content to rely on the position under the common law and principles of private international law.

The Injunction

36. In my judgment the foreign proceedings are, to use the wording of section 11A(1)(b), “*capable of giving rise to a judgment which may be enforced in the Islands... at common law*”. There is plainly a good arguable case. Moreover, in my judgment it is “*just and convenient*” to grant the injunction in respect of all the Defendant’s assets in the Cayman Islands, including the specified real properties and cash in the bank accounts.
37. This Court is, in effect, being requested to act ancillary to the Circuit Court of Tennessee which is exercising the primary jurisdiction and to facilitate persevering the position pending the enforcement of the Circuit Court Judgment which is presently the subject of an appeal.
38. In light of paragraph 8 on page 41 of the Circuit Court Judgment, I have been persuaded that it is appropriate to grant an injunction covering all of the Defendant’s Cayman assets including “*real property, businesses, and bank accounts*”.
39. The injunction will “hold the ring” and preserve the status quo until the determination of the appeal. If the appeal is unsuccessful, it will remain in place. If the appeal is successful and the Defendant’s properties and assets in the Cayman Islands are excluded, then of course the Defendant may apply to vary or discharge the injunction. In the meantime, the injunction can be put in place to assist in the fair determination and enforcement of the foreign proceedings by the court having primary jurisdiction. The likely effect of the injunction will be to promote the doing of justice overall and keeping this holding injunction in place while the proceedings in America are finally sorted out should not operate unfairly or oppressively in the circumstances of this case.



40. In his Memorandum in Support of the Motion for a Stay of Final Order Pending Appeal, the Defendant refers to authorities and court action “*to protect against dissipation of the marital estate pending appeal*”. The Defendant’s Motion dated 11 October 2021 for a stay of the Final Decree pending appeal refers in its closing words to the need to “*preserve the assets of the marital estate, protect the parties’ interest pending the appeal, and serve the interest of justice*”. The interim injunction granted by this Court should do likewise.

Disclosure Orders

41. In addition to an asset freezing Order, the Plaintiff also seeks provision of information from the Defendant within 72 hours of all his assets in the Cayman Islands exceeding USD\$5,000 and an affidavit within 5 working days after being served with the Order.
42. Nothing is written in the skeleton argument on the disclosure relief requested. No authorities are referred to the Court in respect of it. It is, however, well established that when granting asset freezing orders, as was submitted before the Court this morning, the Court also has jurisdiction to grant disclosure orders where it is necessary to “police” or give effect to the asset freezing order.
43. Moreover, this Court is in effect acting ancillary in support of the relevant foreign court which has the primary jurisdiction dealing with the substantive proceedings between the parties. The Tennessee Circuit Court at paragraph 8 on page 41 of its judgment delivered on 5 January 2021 required each party to disclose to the Court and the other party within 30 days any property including real property, businesses, and bank accounts not identified on Exhibit A. The Defendant should disclose all of his assets, including real property and bank accounts within the Cayman Islands. 72 hours is too short a timeframe; reasonable time periods would be 10 days to provide the information and 14 days to provide the verifying affidavit.
44. This Court makes such disclosure Order to assist in the enforcement of the asset freezing injunction, and also to assist the courts of Tennessee in respect of the Orders made, and to be made, in the family financial proceedings before them.



Full and Frank Disclosure

45. I should add that I have noted what the Plaintiff's attorney has had to say in respect of full and frank disclosure. I accept that an appeal is pending and that the first instance judgment may be set aside or varied, but in the meantime I think that the Defendant's assets within the Cayman Islands should be frozen until the final determination of the foreign proceedings and the enforcement of the Orders of the foreign court.
46. I also note the delays. On what I have read and heard to date there has been no unreasonable delay that would justify this Court in refusing the relief requested. The Plaintiff only recently became aware that the Defendant was seeking to stay the enforcement of the Circuit Court Judgment pending a further appeal and that such application was to be determined this Friday 5 November 2021. The Plaintiff's attorneys have acted rapidly. I can see in the particular circumstances of this case, with its history, that the Plaintiff felt compelled to apply for the relief referred to in the *ex parte* originating summons.
47. I am satisfied that the balance of convenience lies in favour of granting the injunctive relief and the disclosure Order pending the determination of the foreign proceedings and the enforcement of any Orders made in that respect. Obviously if the appeal is successful, the injunctive relief can be revisited. In the meantime the Cayman properties and the assets should be frozen.

Service Out of the Jurisdiction

48. The Plaintiff also seeks permission to serve out of the jurisdiction. Order 11 rule 1(1) of Grand Court Rules, insofar as is relevant, provides that service of a writ outside of the jurisdiction is permissible with leave of the Court if, in the action begun by writ, "(n) the claim is brought for any relief or remedy pursuant to Section 11A of the Grand Court Law (2008 Revision), as amended by the Grand Court Amendment Law 2014." References to "Law" must now, of course, read "Act".
49. I also note Parker J's judgment in *Raiffeisen International Bank AG v Skully* (FSD Unreported judgment, 7 July 2020), and the judgment of the Judicial Committee of the Privy Council in *AK Investment CJSC v Kyrgyz Mobil Tel Ltd* [2011] UKPC 7. Insofar as it is required, I am content to

give leave pursuant to Order 11 rule (1)(1)(n) of the Grand Court Rules to serve the pleadings, the Originating Summons, the evidence, the skeleton argument, any other relevant documents, and this Order on the Defendant at his last known address and also at the addresses of his American attorneys and I make such Order accordingly.

Conclusion

50. The asset freezing and disclosure Orders that I make are in terms of the amended draft helpfully emailed at 2:10 p.m. today; such amended draft to incorporate the amendments I specified in connection with paragraph 5 (to 10 days) and paragraph 7 (to 14 days). That is my judgment in respect of this matter.

THE HON. JUSTICE DAVID DOYLE

JUDGE OF THE GRAND COURT