Case No: **CL-2025-000087, CL-2025-000090**

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: **28 March 2025**

Before :

Mr Justice Butcher

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Between :

BEIJING SONGXIANGHU ARCHITECTURAL DECORATION ENGINEERING CO. LTD	**Claimant**
- and –	
KITTY KAM	**Defendant**

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Arnold Ayoo (instructed by **Reed Smith LLP**) for the **Claimant**

Nick Sloboda KC and Veena Srirangam (instructed by **Enyo Law LLP**) for the **Defendant**

Hearing dates: **28th March 2025**

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JUDGMENT 1

Mr Justice Butcher **Friday, 28 March 2025**

(14:30 pm)

Judgment by **MR JUSTICE BUTCHER**

1. This is the return date for a freezing order and alternative service order made at a without notice hearing by Robin Knowles J on 11 March 2025. The defendant seeks the setting aside of the order on the basis, firstly, that the order should not have been granted because it was being sought in breach of an undertaking to the Hong Kong court and, secondly, if that is wrong, because there was a failure on the part of the claimant to make full and frank disclosure and a failure of a fair presentation to Robin Knowles J.

2. The background to this is as follows. On 5 October 2022, the claimant commenced proceedings against the defendant before the Hong Kong Court of First Instance, alleging that it had been fraudulently induced into transferring two sums to entities allegedly owned or controlled by the defendant, namely Hong Kong $220,548,682 and Hong Kong $32,500,000.

3. On 6 October 2022, the claimant brought an application for a Mareva injunction against the defendant in respect of her assets in Hong Kong up to the value of those two sums together with a disclosure order. The Hong Kong Court of First Instance granted the injunction sought by the claimant and made ancillary disclosure orders against the defendant on 13 January 2023.

4. The claimant gave various undertakings in that injunction as recorded in schedule 2 thereto, in particular, and I quote paragraphs 5 and 6:

   "The plaintiff will not, without the leave of the court, begin proceedings against the defendant in any other jurisdiction or use information obtained as a result of an order of the court in this jurisdiction for the purpose of civil or criminal proceedings in any other jurisdiction.

   6. The plaintiff will not, without the leave of the court, seek to enforce this order outside Hong Kong."

5. On 24 September 2024, the claimant applied to the Hong Kong Court of First Instance for leave under the undertaking to, and I quote:

"... commence proceedings in Singapore against Kam and/or to commence third party discovery proceedings against Standard Chartered Bank in the courts of Singapore".

6. On 27 September 2024, the Hong Kong Court of First Instance granted leave for the claimant to institute discovery proceedings against third parties in Singapore including against Standard Chartered Bank.

7. On 25 October 2024, default judgment was entered against the defendant and her amended defence was struck out in relation to the first of the two sums which I have mentioned, the sum of Hong Kong $220,548,682. The judgment was entered as a result of an unless order of 27 September 2024. I understand that the defendant has appealed that judgment.

8. On 16 December 2024, there was a further hearing before the Hong Kong Court of First Instance at which the remainder of the summons for leave was considered. By an order of 16 December 2024, the Hong Kong Court of First Instance by Deputy High Court Judge Chan KC ordered, with reasons to follow, and I quote:

   "For the avoidance of doubt the plaintiff be released from the undertaking given under paragraph 5 of schedule 2 of the order made by the Honourable Mr Justice Anthony Chan dated 13 January 2023 to the extent of and be at liberty to enforce the judgment entered herein on 25 October 2024 if it is so desired anywhere outside the jurisdiction".

9. On 8 January 2025, the Hong Kong Court of First Instance gave its reasons for that decision. The Hong Kong Court of First Instance set out the history of the leave summons and said, at paragraph 10:

   "At the hearing, Mr Douglas Lam SC … counsel for P [ie the claimant], clarified and confirmed that as the part judgment has been so entered on [25 October] 2024, P would now only be seeking by the remainder of the leave summons for leave to enforce the part judgment in Singapore by, among other things, registering the Part Judgment in Singapore … and then taking such enforcement or execution procedures there. In the course of an exchange with the bench, Mr Lam SC further

clarified that P was in effect seeking, for the avoidance of doubt, a release from the undertaking to the extent that P be at liberty to enforce the part judgment in other jurisdictions as P might be advised or desire ('the release'). He explained that as this action was still ongoing and the Mareva injunction subsisting, it would be proper and necessary for P for the avoidance of doubt to obtain the release.

"11. As P was merely seeking the release to enforce the part judgment elsewhere … and not seeking to apply for an interlocutory Mareva injunction elsewhere in addition to the one it obtained in Hong Kong; the above-mentioned guidelines [ie the Dadourian guidelines, referred to in §8 of the 16 December judgment] are not applicable or relevant…"

10. The claimant instituted discovery proceedings against Standard Chartered Bank in Singapore on 15 November 2024. When it sought to add the defendant as a respondent to those proceedings the defendant objected to being added in light of the undertaking to the Hong Kong court. The claimant's Singaporean solicitors wrote to the Singapore court on 27 February 2025 and referred to paragraph 11 of the judgment which had been delivered on 8 January 2025 in the following terms, and I quote:

"… Indeed at paragraph 11 of the Reason for Decisions, it is clear even if there are any proceedings that a residual undertaking is meant to prevent, these would be proceedings relating to interlocutory Mareva injunctions outside Hong Kong and certainly not third-party discovery proceedings in aid of enforcement of judgment, ie OA1198: 'As P was merely seeking the Release to enforce the Part Judgment elsewhere (and it was not disputed that Kam did not have sufficient assets in Hong Kong to satisfy the Part Judgment), and not seeking to apply for an interlocutory Mareva injunction elsewhere in addition to the one it had obtained in Hong Kong, the above-mentioned guidelines are not applicable or relevant'".

11. On 4 March 2025, the claimant commenced two claims in this jurisdiction under Part 7 and Part 8. The Part 7 claim sought recognition and enforcement of the Hong Kong judgment. The Part 8 claim form had, as its details of claim, the following:

"1. The claimant has by a separate Part 7 claim commenced an action for recognition and enforcement at common law of the judgment of Hong Kong Special Administrative Regional Court of First Instance dated 25 October 2024. The HCA judgment is to the value of Hong Kong $220,548,682 ...

2. Pending determination of the enforcement action and actual enforcement of the HCA judgment, the Claimant seeks (by this Part 8 Claim) a domestic freezing injunction (and ancillary disclosure orders) in support of foreign proceedings under s. 25 of the Civil Jurisdiction and Judgments Act 1982 ('CJJA'), CPR25.1(f)(i) and (g) and CPR25.4.

3. In the alternative, in the event that the HCA judgment is set aside and (as a result) the underlying proceedings in Hong Kong proceed to trial, the Claimant nevertheless makes the injunction application at paragraph 2 above in support of those proceedings."

12. The order sought from and granted by Robin Knowles J was an order under section 25 of the CJJA as was explained in the skeleton argument put before Robin Knowles J at the without notice hearing.

13. Section 25 provides in part:

(1) The High Court in England and Wales or Northern Ireland shall have power to grant interim relief where—

(a) proceedings have been or are to be commenced in a 2005 Hague Convention State other than the United Kingdom or in a part of the United Kingdom other than that in which the High Court in question exercises jurisdiction; and

(b) they are or will be proceedings whose subject-matter is within scope of the 2005 Hague Convention as determined by Articles 1 and 2 of the 2005 Hague Convention (whether or not the 2005 Hague Convention has effect in relation to the proceedings).

(2) On an application for any interim relief under subsection (1) the court may refuse to grant that relief if, in the opinion of the court, the fact that the court has no jurisdiction apart from this section in relation to the subject-matter of the proceedings in question makes it inexpedient for the court to grant it.

(3) Her Majesty may by Order in Council extend the power to grant interim relief conferred by subsection (1) so as to make it exercisable in relation to proceedings of any of the following descriptions, namely—

(a) proceedings commenced or to be commenced otherwise than in a 2005 Hague Convention State;

(b) proceedings whose subject-matter is not within the scope of the 2005 Hague Convention as determined by Articles 1 and 2 of the 2005 Hague Convention.

14. The procedural power to grant such an injunction comes from CPR25.1(f)(i) and (g), which relate to freezing and ancillary disclosure orders and CPR25.4(1)(a), which applies where the remedy is sought in relation to proceedings which are taking place or will take place outside the jurisdiction.
15. In exercising the power, there is a two-stage test which is described in *Dicey* at paragraph 10-043. First, the court should consider whether the facts would warrant the relief sought if the substantive proceedings had been brought in England and, second, in accordance with section 25(2) of the CJJA, the court may refuse to grant the relief if, in the opinion of the court, the fact that the court has no independent jurisdiction in relation to the subject matter of proceedings makes it inexpedient for the court to grant it.
16. Where the application concerns relief in aid of the enforcement of a foreign judgment, the court will adopt the same approach in jurisdictional terms to determine whether it is expedient to grant the order as it would pre-judgment.
17. There was, as I understood it, agreement between the parties that that approach involves, first of all, as a first limb, the court considering the relevant test for a freezing order, which is well known and

can be summarised as: there must be a good arguable case on the merits; there must be a real risk, judged objectively, that the judgment will not be met because of an unjustified dissipation of assets; and, thirdly, it must be just and appropriate as a matter of discretion to grant the injunction.

18. In relation to the second limb, that of expediency, Potter LJ in the case of Motorola Credit Corp v Uzan (No 2) [2004] 1WLR 113 at 115, set out five principles which are as follows:

    (1) whether the making of the order would interfere with the management of the case in the primary court, eg where the English order would be inconsistent with an order of the primary court or would overlap with it;

    (2) whether it was the policy of the court in the primary jurisdiction not itself to make the order in question (in that case worldwide freezing orders);

    (3) whether there was a danger that the orders made would give rise to disharmony or confusion and/or the risk of conflicting, inconsistent or overlapping orders in other jurisdictions, in particular the courts of the state where the person to be enjoined resided or where the assets affected were located;

    (4) whether at the time the order was sought there was likely to be a potential conflict as to jurisdiction, making it inappropriate and inexpedient to make a worldwide order;

    (5) whether, in a case where jurisdiction was resisted and disobedience was to be expected, the court would be making an order which it could not enforce.

19. The defendant says that a freezing order in this case should not have been granted because, as to the first limb, it was not just and convenient as a matter of discretion for the court to grant a freezing order where it was being sought in breach of an undertaking to the primary court. The defendant says, as to the second stage, that the freezing order is or would be inexpedient because it creates disharmony or confusion and/or the risk of conflicting inconsistent or overlapping orders in the other jurisdiction, and gives rise to a potential conflict because it is inconsistent with the undertaking

which was given to the Hong Kong court. So both points raise effectively the same issue, namely the alleged breach of the undertaking.

20. I should record at this juncture that the undertaking issue apart, the present case would seem to be one in which a freezing order is eminently justified for the reasons developed in the material which was put before Robin Knowles J.

21. What is said, though, by the defendant in rather more detail is this. First, that there is a clear breach of the terms of the undertaking to the Hong Kong court. The only permission given by the Hong Kong court was for enforcement of the judgment outside Hong Kong and a freezing order is not enforcement. The defendant referred to two English cases to the effect that a post-judgment freezing injunction was not a measure of enforcement or a proceeding concerned with the enforcement of judgments under the Brussels Regulation. Secondly, that it is clear that the freezing order was not sought as enforcement because it was sought in freestanding Part 8 proceedings. Thirdly, that the judgment of the Hong Kong Court of First Instance, and in particular the reasons in paragraphs 10 and 11, showed that the order giving leave did not extend to Mareva injunctions elsewhere, ie not in Hong Kong. It is further said by the defendant that the reasons given by Ms Cherry as expert evidence, although the defendant would say it was not properly expert, in the material put before Robin Knowles J as to why there was no breach of the undertaking, were inadequate.

22. In my judgment, at least in circumstances where it is disputed, it would be inappropriate for the English court to seek to determine what the effect of the Hong Kong court's order is and whether the defendant is in breach of its undertaking to the Hong Kong court. The potential difficulties of doing so are obvious. Suppose that this court were to say that there was a breach of that undertaking and order and the Hong Kong court were then to say that there was not. That would be a most regrettable inconsistency and would show that the English court should not have made the determination that it did. Equally unsatisfactory would be any contention that the English court

having determined the question, it could not be reargued before the Hong Kong court, which is the court to which the undertaking was given and which made the order.

23. The terms of a court's own order and the interpretation of undertakings given to it seem to me pre-eminently matters for that court, and that a different court will only venture upon a determination of such matters if there is agreement that it should or if it is unavoidable.

24. Here, I am satisfied that there is a bona fide argument that there is no breach of the undertaking given to the Hong Kong court, effectively for the reasons given by Ms Cherry. The question is one as to what the Hong Kong court order was as to permission to enforce the Hong Kong judgment: in other words what the Hong Kong order means by enforcement of the Hong Kong judgment. It may or may not be the case that the Hong Kong court will find of assistance English cases based on provisions of the Brussels Regulation. It may or may not be the case, as Ms Cherry says, that the Hong Kong court will gain more assistance from the *Green Elite* case and the other case which she cites. The simple position is that I cannot properly determine this question.

25. Where then does that leave the court and the parties? Mr Sloboda KC says that there can be seen to be at least a risk that the order sought, in other words the freezing order here, would interfere with the management of the case in the primary court, and there is at least a danger of disharmony and confusion and therefore it is inexpedient that there should be a freezing order. I do not accept that submission.

26. As I see it, it is not apparent that there will be any interference with the management of the case in the primary court, which is the subject of the first Motorola consideration. The only way in which it is suggested that there was any inconsistency was that the undertaking, as varied, was intended to prevent proceedings of the present type. That, however, is in issue. Even if it was so intended, moreover, the orders granted by Robin Knowles J do not really interfere with the management of the case in Hong Kong, though they may provide a degree of support for those proceedings which the Hong Kong court did not contemplate.

27. The third Motorola consideration is, I apprehend, directed to the position not of the primary court but to third courts, as it were. But if and insofar as the third Motorola consideration is applicable, I do not see that there is any sufficient risk or danger of disharmony or confusion as to make it inexpedient to grant the relief.

28. I bear in mind that it is always open to the defendant to go to the Hong Kong court to seek a determination that there has been a breach of the undertaking and, if that were done successfully, then no doubt that is a matter which the English court would consider as to whether the injunction should be brought to an end.

29. For these reasons, I do not consider that the alleged breach of the undertaking forms a sufficient basis to say that the stage 2 test is not met. Equally, in relation to the stage 1 test, I am not satisfied that the existence of an argument as to the scope and effect of the undertaking means that it is not just and convenient to grant a freezing order.

30. As I have said, and has not been challenged today, there seem to be good reasons in the present case, the point about the undertaking apart, why there should be a freezing order.

31. The defendant contends, however, that even if the freezing order is not set aside on the grounds of breach of the undertaking, it should, on any view, be set aside by reason of the failure to raise or fairly present the undertaking and its effect to Robin Knowles J at the without notice hearing.

32. The guidance in this area is summarised in Tugushev v Orlov [2019] EWHC 2031 (Comm) at paragraph 7. The defendant says that the undertaking was not mentioned at all in the skeleton argument or the solicitor's affidavit in support which were put in for the without notice hearing and, insofar as there was a reference in Cherry 1, it was not a fair presentation of the arguments the defendant would wish to put forward.

33. I remind myself, as Carr J said in Tugushev v Orlov at [7(vi)]:

"… it is necessary for a sense of proportion to be kept. … The question is not whether the evidence in support of the application could have been improved. The primary question is whether in all the circumstances its effect was such as to mislead the court in any material respect."

34. I have carefully considered the defendant's complaint. I can see that it might have been better that the undertaking was expressly mentioned in the skeleton argument. However, I do not think that the effect of the way that the matter was presented was, in this particular case, to mislead the court.

35. I have considered here the following matters. First, that the reading list which was put in for the without notice hearing was an appropriately confined one.

36. Secondly, that the Cherry witness statement was one of only two pieces of evidence relied on and nominated in the reading list, and that the paragraphs enumerated in the reading list, which were not of all the witness statement, dealt with the issue of possible disharmony between the order of the Hong Kong court and the proposed freezing order and dealt with the undertaking.

37. Thirdly, the Cherry 1 witness statement was referred to in the skeleton argument in support of the freezing order put in at the without notice hearing, especially in paragraph 28, which invited attention to Cherry 1 in some detail.

38. And, fourthly, Cherry 1 does draw attention to the apparent distinction between leave to enforce and leave for an application for an interlocutory Mareva injunction, and explains Ms Cherry's view that the latter does not refer to an injunction sought in aid of enforcement.

39. Accordingly, I do not consider that there was a failure to make full and frank disclosure. If I am wrong about that, I am of the clear view that it was not a deliberate failure seeking to take advantage of the court and the without notice nature of the hearing, and I would not have been minded to set aside the order for this reason alone.

40. So in the circumstances, the discharge application fails.