



IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO: FSD 194 OF 2023 (DDJ)

IN THE MATTER OF SECTION 72 OF THE ARBITRATION ACT, 2012

AND IN THE MATTER OF SECTION 5 OF THE FOREIGN ARBITRAL AWARDS
ENFORCEMENT ACT (1997 REVISION)

AND IN THE MATTER OF THE ARBITRATION PROCEEDINGS BETWEEN CONCORDE
HEALTHCARE LIMITED (AS CLAIMANT) AND CHANG HUAN-CHENG AND BRILLIANT
APEX INTERNATIONAL LIMITED (AS RESPONDENTS) SEATED IN HONG KONG IN
ACCORDANCE WITH THE 2013 HKIAC ADMINISTERED ARBITRATION RULES CASE
NO.: HKIAC/A21248

BETWEEN

CONCORDE HEALTHCARE LIMITED

Plaintiff

and

CHANG HUAN-CHENG

BRILLIANT APEX INTERNATIONAL LIMITED

Defendants

Before: The Hon. Justice David Doyle

Appearances: Nicholas Dunne of Walkers (Cayman) LLP for the Plaintiff

Heard: 23 February 2024

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**Draft transcript
of Ex tempore Judgment circulated:** 23 February 2024

**Draft transcript
of Ex tempore Judgment approved:** 26 February 2024

HEADNOTE

Determination of application to make a charging order absolute

EX TEMPORE JUDGMENT

Introduction

1. Some people find it difficult to face up to their legal obligations and to admit defeat promptly or at all. Chang Huan-Cheng (D1) appears to fall into that category of non-compliant human beings. D1 is a Taiwanese national and Brilliant Apex International Limited (D2) is a limited liability company incorporated under the laws of Samoa.
2. In this case the Award in arbitration proceedings between the parties in Hong Kong was issued against the Defendants as long ago as 15 March 2023 but has still not been complied with.
3. D1 and D2 on 14 June 2023 filed an originating summons in the Hong Kong Court of First Instance seeking to set aside the Award. On 17 October 2023 the Hong Kong Court (Justice Mimmie Chan) dismissed the originating summons with costs to Concorde Healthcare Limited to be taxed on the indemnity basis if not agreed.
4. On 5 September 2023 I had made an order giving the Plaintiff leave to enforce in the Cayman Islands the Award. The Defendants had 28 days from the date of service of the Order upon them to apply to the court to set aside the Order. No set aside application has been received.

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5. On 19 January 2023 I made a charging order – notice to show cause. It was ordered that unless sufficient cause to the contrary be shown at a hearing today, 23 February 2024 at 10am, D2’s interest in 4000 shares in Comfort Healthcare (Cayman) Limited do continue to stand charged with the payment of various significant sums including the Exit Price of US\$85,766,623, interest and costs. I should add that I am satisfied that there has been proper service on all relevant persons and Mr Nicholas Dunne, who appears for the Plaintiff, has helpfully taken me through that evidence this morning.
6. There has been no appearance by or on behalf of D1 or D2 today. No one has appeared to show “sufficient cause.” No affidavit or affirmation has been put before the court.

The “Answer to Complaint”

7. For the sake of completeness and in fairness to D1 I should add that the court has received a 4 page document dated 15 February 2024 apparently signed by D1 and entitled “Answer to Complaint”. There is nothing in the jurisdictional or other issues raised in the “Answer to Complaint”. They are effectively repelled by the written submissions of the Plaintiff dated 19 February 2024, the contents of the Supplementary Hearing Bundle and the well-focused oral submissions put before the court this morning by Mr Dunne. The Defendants certainly have not shown “sufficient cause” which would prevent the charging order being made absolute.
8. D1 in his document dated 15 February 2024 seeks to raise 3 main points. In short summary he says that:

Lack of jurisdiction

- (1) The court lacks jurisdiction over the Defendants and in particular Comfort Healthcare (Cayman) Limited “is not a party to the Hong Kong arbitration award.”

Scope of award unclear and disputed

- (2) The scope of the “Hong Kong arbitration award” to “obtain consent from the governmental authority” is “evidently unclear, thus the application based on the disputed arbitration judgment should be rejected.”

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The shares have been pledged

- (3) D2's 35% shareholding in Comfort Healthcare (Cayman) Limited "has been pledged to the Golden Rich Investment Limited on 6 September 2023, and the shares have been delivered to the Golden Rich Investment Limited in Taiwan. Therefore, it is practically impossible to enforce the shares in THE GRAND COURT OF THE CAYMAN ISLANDS."

9. There is nothing of substance in any of these 3 points and I can state my reasons relatively concisely for rejecting them.

Jurisdiction

- (1) The court's jurisdiction in this case arises from statute. On 5 September 2023 I made an order pursuant to section 72 of the Arbitration Act 2012 and section 5 of the Foreign Arbitral Awards Enforcement Act (1997 Revision) giving the Plaintiff leave to enforce in the Cayman Islands the final arbitral award dated 15 March 2023 issued in Case No. HKIAC/A21248 and gave the Defendants 28 days from the date that the order is served upon them to apply to the court to set aside the order. The court plainly has jurisdiction in this case. The fact that Comfort Healthcare (Cayman) Limited was not a party to the arbitration is irrelevant. It is D2's shareholding in that company which is a relevant asset upon which the Plaintiffs seek enforcement. The asset is within the jurisdiction of this court.

Scope of award

- (2) The scope of the Award is not unclear and the Defendants have made no application to set aside the order granting the Plaintiff leave to enforce it in the Cayman Islands.

Pledge

- (3) The Defendants have produced no sworn evidence of the purported pledge. It is not even exhibited to an affidavit or an affirmation. It is simply referred to in one short paragraph on a piece of paper signed by D1. D1 is seriously mistaken or deluded if he is foolish enough to think that the purported creation of a pledge the day after this court granted an order giving leave to the Plaintiff to enforce the Award against the Defendants can in some way defeat the enforcement of the Award and the consequent order of this court. Moreover Golden Rich Investment Limited (a shareholder of D2) appears to be controlled by a close

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associate of D1. At the very least there appears to be a connection between Golden Rich Investment Limited and D1. The circumstances surrounding the purported pledge appear somewhat suspicious.

Mr Dunne has referred to various authorities on this pledge issue.

He submits that “as set out in Goode and Gullifer on *Legal Problems of Credit & Security* a pledge over certificated shares is not possible, because a pledgee cannot take possession of the shares without also holding legal title to them.” (paragraph 9(c) of his skeleton argument dated 18 February 2024).

Paragraph 1-48 of Goode and Gullifer does not put it quite as high as Mr Dunne does. It simply states:

“... it would seem that English law does not recognise a pledge of registered securities, such as certificated shares.”

Footnote 267 states:

“Even where the delivery of the certificate to the creditor is accompanied by a completed or blank transfer the interest of the transferee is purely equitable until the transfer has been registered, *Harrold v Plenty* [1901] 2 Ch 314; *Re Lin Securities Pte* [1988] 1 SLR 340 at 350; *Re City Securities Pte* [1990] 1 SLR 468 at 474.”

A supplemental hearing bundle was provided but no supplemental skeleton argument. At divider 3 is one page from *Snell's Equity* 34 edition section 39-054 which reads as follows:

“In general, subject to making the necessary allowances for the different character of the property, the position of a mortgagee of pure personalty is the same as that of a mortgagee of land. Thus, if foreclosure could be claimed where the property were land, it is equally available as a remedy where the security is pure personalty. A deposit of a share certificate as security for a loan has been held to amount to an

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equitable mortgage by deposit, and not to a mere pledge, and is therefore properly the subject of foreclosure.²⁹⁰”

Footnote²⁹⁰ refers to *Harrold v Plenty* [1901] 2 Ch 314.

At divider 4 is the entirety of Chapter 16 of *Paget’s Law of Banking* (pages 35-60 of the bundle). No particular paragraph or section is referred to. Following questions from the bench at this morning’s hearing Mr Dunne stated that he relied on paragraphs 16.1 and 16.2. The relevant extracts appear as follows:

“16.1 Pledge and lien are both types of security founded on possession. As noted in Chapter 14, the difference between them is that in the case of a pledge the owner delivers possession to the creditor as security ...”

“16.2 ... Delivery of a share certificate cannot constitute a pledge of the underlying shares, not merely because the certificate does not represent the underlying shares, only evidence of title to them, but because possession of shares (being intangible assets, or choses in action) is an impossibility.”

Divider 5 is stated to contain *Palmer’s Company Law*, Chapter 13.1. It is at paginated pages 61-67 but again no particular sections were highlighted. Mr Dunne this morning informed the court that he did not rely on any particular paragraph in *Palmer’s*.

Mr Dunne helpfully took me to paragraph 7 of the first affidavit of John Giles Crook sworn on 19 February 2024 which indicated that D2 remains the holder of 4000 shares in Comfort Healthcare (Cayman) Limited.

Mr Dunne also referred to the restrictions on the transfer of shares contained in 5.1.2 of the Shareholders Agreement dated 13 September 2017 between the Plaintiff, the Defendants and Comfort Healthcare (Cayman) Limited.

10. I note all that Mr Dunne has written and said in respect of this purported pledge and have concluded, essentially for the reasons so eloquently put forward on behalf of the Plaintiff, that there is nothing in this pledge point or indeed in the other points relied upon by D1 in an unjustifiable attempt to evade enforcement of the Award and the Order of this court.
11. In short summary, no admissible evidence has been put before the Court on behalf of the Defendants and no persuasive arguments have been presented which lead me to conclude that “sufficient cause” has been show. The burden to show “sufficient cause” is on the Defendants and they have failed to discharge it.

The relevant law and procedure

12. I have considered the relevant law and procedure (including *Vento v Westminster Hope & Turnberry Ltd* 2015 (2) CILR 249, a judgment of Smellie CJ as he then was). *Vento* referred to the procedure provided for in Order 50 of the Grand Court Rules: Charging Orders, Stop Orders etc. Smellie CJ made a charging order absolute. It was held that as the defendant had failed to appear it had not been established that the order would be inappropriate. The burden was on the defendant to demonstrate that the court should not exercise its discretion to make the charging order absolute. The court made the charging order absolute over the shares held on the defendant’s behalf. The court in exercising its discretion should take into account all the circumstances of the case. The court should exercise its discretion to do equity, as far as possible, to all the various parties involved. Assets which can properly be the subject of a charging order include interests held by the debtor beneficially in securities such as shares of any body incorporated within the Cayman Islands.
13. At paragraph 14 the judge said that “as at the time of the granting of the order nisi, by GCR O.50 r.5(1) no subsequent purported disposition by the judgment debtor may be held as valid as against the judgment creditor, so long as the order remains in force.”
14. The judge at paragraph 15 referred to O.50 r.3(2) and r.12 and Form 34 and the “stop notice.”
15. At paragraph 16 the judge added that such provision offers some comfort to the plaintiffs/judgment creditors against unwarranted dissipation of assets.

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Determination

16. I take into account all the circumstances of this particular case. I agree with Mr Dunne that there is no good reason to discharge the order nisi. In such circumstances the court should proceed to make a charging order absolute.

The Order

17. I am content to make an order substantially in terms of the draft handed into court this morning, the substance of which was largely reflected in the first draft at Tab 2 of the hearing bundle. I also agree that costs should be on the indemnity basis. The Defendants' conduct has been unreasonable to a high degree. They should have complied with the Award long ago. They have caused unnecessary costs to be incurred and they have wasted a lot of time. They should now gracefully accept defeat and comply forthwith.

David Doyle

THE HON. JUSTICE DAVID DOYLE
JUDGE OF THE GRAND COURT