



Neutral Citation Number: [2020] EWHC 318 (Ch)

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

BUSINESS LIST (ChD)

No. BL-2019-001519

7 Rolls Building
Fetter Lane
London, EC4A 1NL

Wednesday, 5 February 2020

Before:

MR JUSTICE ZACAROLI

Between:

(1) CHINA METAL RECYCLING (HOLDINGS) LIMITED
(in compulsory liquidation)
(2) CHINA STEEL (MACAO COMMERCIAL OFFSHORE) LIMITED
(in compulsory liquidation) **Claimants/Applicants**

- and -

(1) CHUN CHI WAI
(2) WELLRUN LIMITED
(3) LAI WUN YIN **Defendants/Respondents**
(4) CHUN HEI MAN
(also known as Judy Chun)
(5) CHUN SIN WA
(also known as Kristy Chun)
(6) CHUN KA MAN
(also known as Carmen Chun) **Defendants**

**Mr Christopher Lloyd (instructed by Hogan Lovell International LLP) for the
Claimants/Applicants.**

The Defendants/Respondents were not present nor represented.

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MR JUSTICE ZACAROLI

MR JUSTICE ZACAROLI:

- 1 This is an application for service out of the claim form in this matter against the first to third defendants. The sixth defendant accepts that she was domiciled in England, and therefore no issue arises in relation to her. The fourth and fifth defendants have, by consent, permitted service on them by alternative means. It is agreed with them, and it is proposed in relation to the other defendants, that the action here be stayed until judgment is obtained in existing proceedings in Hong Kong against the first three defendants, arising out of different, but connected, subject matter.
- 2 The fourth to sixth defendants are the daughters of the first and third defendants.
- 3 The claim is, principally, to establish that property situated in this jurisdiction received by the fourth to sixth defendants, including a valuable flat in London and substantial sums of cash now sitting in bank accounts, is beneficially owned by either the first or second defendants. Alternatively, if evidence produced in proceedings in Hong Kong by the third defendant is accepted, then it is beneficially owned by the third defendant.
- 4 Secondly, if the property is no longer beneficially owned by any of the first to third defendants, then the claimants contend that it was transferred by one or other of them to the fourth to sixth defendants at an undervalue for the purpose of prejudicing the interests of creditors within the meaning of s.423 of the Insolvency Act 1986.
- 5 A *Chabra* injunction was obtained in Hong Kong in relation to the London flat, on the basis there was a reasonable argument that it belonged to the first defendant, or was otherwise an asset against which a judgment against him could be enforced. An injunction was obtained in England pursuant to s.25 of the Civil Jurisdiction and Judgments Act 1982 over the London flat in aid of the proceedings in Hong Kong. Pursuant to those injunctions disclosure was given by the daughters revealing other payments being made to them between 2013 and 2014 in relation to which the claimants now seek recovery.
- 6 The fourth to sixth defendants applied in Hong Kong to discharge the *Chabra* injunction, relying on evidence from their mother (the third defendant) that the money came from her and their maternal grandmother. On 24 March 2017, Deputy High Court Judge Lee dismissed the discharge application on the basis of substantial evidence filed as to the question of beneficial ownership. He concluded there was good reason to suppose that the London flat and the money here were the property of the first and second defendants. The Deputy Judge envisaged that what is called a '*Masri*' procedure for determining beneficial ownership of the assets would subsequently take place. He appears to have assumed those proceedings would take place in Hong Kong.
- 7 These proceedings are issued, now, in England to avoid a potential limitation issue. Proceedings have been issued in Hong Kong seeking the same relief, although the writ in those proceedings has not yet been served because there is a more generous time period for service in Hong Kong. The application before me is of some urgency given that the time period for service of the claim form here will run out shortly.
- 8 The test for service out of a claim form is well known. First, I must be satisfied on the basis of the evidence that there is a serious issue to be tried in the proposed action. I can say, shortly, that I am satisfied of that, having seen the evidence and read the helpful skeleton argument provided by Mr Lloyd.

- 9 Secondly, I must be satisfied that one or more of the gateways to be found in CPR Practice Direction 6B, paragraph 3.1 are established. The relevant standard here is that the claimants have the better of the argument. Finally, I need to be satisfied that England is clearly and distinctly the appropriate forum.
- 10 So far as the gateways are concerned, I am satisfied that each of those relied on in this case is established. First, the claims are brought against the first to third defendants on the basis that they are necessary or proper parties in relation to a claim already brought against the sixth defendant who, as I said, is domiciled here. It seems to me that if the matter were being pursued in England there are a number of significant connections between the claim against the sixth defendant and the claim against the other defendants such that it would be entirely appropriate to have those claims tried together. On that basis, I am satisfied that the test under this gateway is satisfied.
- 11 The second gateway is that there is property in this jurisdiction. There is no doubt that the relevant property is situated in this jurisdiction: it consists of the London flat and funds in bank accounts in this country. The claim is, in reality, simply about recovery of such property in order to enforce a money judgment against the first three defendants which the claimants hope to obtain in Hong Kong.
- 12 The third gateway is that it is a claim under an enactment, namely s.423 of the Insolvency Act 1986. Again, I am satisfied for the reasons advanced by Mr Lloyd today, that this gateway is also established.
- 13 I turn now to the question of whether England is the appropriate forum. There are a number of factors that point towards England, and a number that point towards Hong Kong. Those that point towards England are as follows:
- (1) The claim concerns ownership of land here and money in English bank accounts.
 - (2) The fourth, fifth and sixth defendants were in England when they received the money.
 - (3) Significantly, the transfers were deliberately made to England to be put as far away from Hong Kong as possible. If, as Mr Lloyd submits, the intention was merely to benefit the daughters, that could have been done by transferring money to their Hong Kong bank accounts.
 - (4) One of the daughters is domiciled here.
 - (5) Although of less relevance, English law applies both to the proprietary claim and the s.423 claim.
- 14 The factors pointing the other way, as identified by Mr Lloyd in accordance with his duty of full and frank disclosure, are the following:
- (1) The Hong Kong proceedings have been ongoing since 2013, and the underlying fraud has been litigated there. However, this claim is conceptually distinct from the underlying proceedings. The Hong Kong proceedings relate to a fraud, which itself relates to propping up the share price of the company. It is true that some parts of the particulars of claim overlap with the Hong Kong proceedings, in particular the extent to which the first defendant was in the habit of using nominees, and using his other family members as nominees. But, in reality, the claimants will be seeking to

rely upon findings made in the judgment in those proceedings as a starting point in this claim. It is difficult to see how they could be relitigated irrespective of the outcome in the Hong Kong proceedings. Certainly, they could not be relitigated against the first defendant and I see little prospect of them being relitigated as against the other defendants.

- (2) The daughters faced contempt proceedings in Hong Kong, and that involved an investigation of some, at least, of the same subject matter. However, those proceedings were dismissed, not because of a determination as to the beneficial ownership of the flat and the moneys. The fact that there have been proceedings in the past does not weigh heavily in the balance in favour of Hong Kong so far as the appropriate forum for these proceedings is concerned.
- (3) The discharge application has already been heard in Hong Kong. As I said, the Deputy Judge seemed to envisage the *Masri* proceedings that would follow would be in Hong Kong. However, the question of where enforcement against the English assets should take place was not an issue raised before the Deputy Judge in that hearing, and certainly was not determined by him. Again, I do not think that weighs particularly heavily.
- (4) A possible factor pointing towards Hong Kong is that at least some of the evidence in the existing Hong Kong proceedings will be relevant in the claim here. The primary intention, however, is that by the time that these proceedings are reactivated, that evidence will have been condensed into a judgment of the Hong Kong Court. To the extent that it might be thought that there would be savings in Hong Kong because the same judge would determine both claims, there can be no guarantee of that given that this claim would not, as I understand it, be joined into the main proceedings in Hong Kong. The claimants would seek to stay this claim (if brought in Hong Kong) pending resolution of the first proceedings in the same way as they intend to seek a stay of this claim if pursued here. There can be no guarantee that the same judge would determine the first and the second claim even if both were heard in Hong Kong.
- (5) The daughters have legal representation in Hong Kong. I do not find that particularly relevant; they also have lawyers in this jurisdiction.
- (6) The potential witnesses include, certainly, the third defendant and two of the three daughters who are in Hong Kong. Indeed, the third defendant is in prison in Hong Kong, and likely to remain there until long after any trial that takes place. This, I think is the most powerful factor that points towards Hong Kong and I will come back to it in a moment.
- (7) The sixth defendant (the third daughter) may undertake to be sued in Hong Kong. That would remove the potential argument that is sometimes deployed, that England is the appropriate forum because otherwise there would be inconsistent judgments. In the circumstances of this case, I do not place much reliance on that point anyway, so I think the seventh factor is not of great relevance here.

15 As I indicated, the most powerful factor pointing towards Hong Kong is witness availability. However, that is counterbalanced by the strong connection between the subject matter of the claim, i.e. property located here, coupled with the fact that the claim is that the transfers were made from Hong Kong to England, deliberately, in order to avoid creditors in Hong Kong. Moreover, I place particular weight on the fact that these proceedings are, in essence,

enforcement proceedings against assets located here, intended to be pursued once a judgment has been obtained in Hong Kong (hence the intention that the claim be stayed pending determination of the Hong Kong proceedings). Taking matters in the round, I am satisfied that England is the appropriate forum.

- 16 Finally, I am persuaded it is appropriate to order alternative service against the first defendant for the reasons outlined in Mr Lloyd's skeleton, and developed in the course of argument today. For those reasons, I will make the order in the form as presented to the court in draft.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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