



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

CAUSE NO: FSD 263 of 2021 (DDJ)

IN THE MATTER OF ORDER 30, RULE 1 OF THE GRAND COURT RULES

BETWEEN

ASPECT PROPERTIES JAPAN GODO KAISHA

Applicant

AND

ICG I

Respondent

IN OPEN COURT

Appearances: Mr Liam Faulkner of Campbells LLP for the Applicant

Before: Hon. Justice David Doyle

Heard: 9 September 2021

**Ex Tempore Judgment
Delivered: 9 September 2021**

**Draft Transcript of Judgment
Circulated: 17 September 2021**

**Transcript of Judgment
Approved: 20 September 2021**

HEADNOTE

Ex parte application for an injunction – ex parte application for the appointment of receivers over assets



JUDGMENT

Introduction

1. I have considered all the written material submitted, including the helpful skeleton argument of the Applicant, the evidence in support of the application, the draft Order and the helpful oral submissions of attorney Liam Faulkner on behalf of the Applicant.

The Ex Parte issue

2. The first issue to deal with is whether this hearing should proceed without any additional notice. The Applicant's skeleton argument and the evidence cover this issue very well. I am grateful to Mr Faulkner and his efficient team at Campbells for their assistance. This has been a very well prepared and presented application and I am grateful to the attorneys for that.
3. I have considered the relevant law, including my judgment in *Cathay Capital Holdings III, LP v Osiris International Cayman Limited* (unreported, 30 August 2021, FSD 245 of 2021 (DDJ)) referred to in the skeleton argument at paragraph 11 onwards.
4. I have also considered the helpful affidavit of Loren Nicole Bowerman sworn and filed today, 9 September 2021. I am satisfied that adequate short notice of this hearing has been properly given. Notice to the Share Charge Receivers at 3.39pm on 6 September 2021. Notice to the former registered office service provider on 7 September 2021, specifying the date and time of today's hearing and providing the documents which had been filed with the Court. Notice to Victory Sky Holdings Limited by their attorneys, Appleby, on 7 September 2021. Documents provided via a share site file. On 7 September 2021 at 9.27pm Cayman time. (10:25am on 8 September 2021 Hong Kong time), notice was given of today's hearing and the time it was due to commence. I note that Victory Sky Holdings Limited is still struck off the register.
5. I was satisfied that it was appropriate in the circumstances to proceed with the hearing this afternoon without an adjournment to enable further notice to be given. There was no need for such an adjournment.



The position of the Applicant

6. The position of the Applicant is very well summarised at paragraph 73 of Mr Fook Seng Heng's twenty-five page affirmation, affirmed on 6 September 2021. It is the Applicant's case that it has been defrauded to the tune of US\$5,624,000.00 The Applicant thought it was a legitimate and *bona fide* investment. The Applicant now believes it is the "*victim of a well-planned and carefully executed fraud, which has seen its apartments stolen from it and received absolutely nothing of value in return.*"
7. I should also confirm that I have not been made aware of any steps being taken for the removal of the Share Charge Receivers or the appointment of the independent director, although I note that there are various claims to the ownership of the Respondent.
8. In my judgment based on what I have read and heard to date, this case loudly cries out for the appointment of receivers to secure and preserve the apartments in Japan and any other assets of the Respondent, pending the determination of the various disputes and claims.
9. The apartments, however, should not be sold and any benefits arising from them, such as rental receipts, must, subject to the payment of the receivers' costs, be retained pending further Order.
10. I note the undertakings contained in section I of Mr Heng's first affirmation and in light of the evidence as to the financial standing of the Applicant, I do not need any fortification of the undertakings at this stage. In particular, I note at page 267 of the bundle the unaudited balance sheet of the Applicant as at 31 December 2020, as submitted to the tax authorities in Japan for tax purposes.

The relevant law

11. I have considered the relevant law, including section 11(1) of the Grand Court Act (2015 Revision) on the power to grant injunctions and appoint receivers when it is just and convenient to do so. I have considered Kawaley J's judgment in *In the matter of Hudson Capital Solar Infrastructure v Sky Solar Holdings, Ltd* (unreported, 27 August 2020, FSD 0166 of 2020 (IKJ)), especially at paragraph 25 and the other authorities referred to in the skeleton argument.

The Evidence

12. As I say, I have also considered all the evidence presented to the Court.

Determination

13. I am satisfied that the Applicant has demonstrated:

- (a) a good arguable case on the merits of the claim;
- (b) a real risk of unjustified dissipation; and
- (c) that it is just and convenient to grant the relief requested.

14. An injunction and a receivership over assets is necessary and proportionate. There is a serious issue to be tried. Damages would not be an adequate remedy. The balance of convenience plainly favours the granting of the relief requested. Granting the relief seems likely to cause the least irredeemable prejudice to one party or another (See *National Commercial Bank Jamaica Limited and Olint Corp. Limited* [2009] UKPC 16, judgment of the Judicial Committee of the Privy Council).

15. Although there are assets outside the jurisdiction, this is a Cayman Islands incorporated company and this Court has jurisdiction over it. If the Applicant has to take further steps where the assets are located, for example Japan, for recognition and assistance from foreign courts then so be it.

The Order

16. I am content for the brief reasons specified in this short judgment to grant the order, substantially in terms of the draft order, helpfully filed in advance of this afternoon's hearing but such should incorporate the amendments I specified during my exchanges with counsel. That completes my short judgment.

THE HON. JUSTICE DOYLE
JUDGE OF THE GRAND COURT