



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

CAUSE NO.: FSD 300 OF 2023 (RPJ)

IN THE MATTER OF THE COMPANIES ACT (2023 REVISION)

BETWEEN:

ASCENTRA HOLDINGS, INC. (IN OFFICIAL LIQUIDATION)

Plaintiff/Applicant

-and-

(1) RYUNOSUKE YOSHIDA

(2) SHANG PENG GAO KE, INC. SEZC

(3) SPGK PTE LTD

(4) GROWTH TODAY INC.

(5) SCUDERIA BIANCO PTE LTD

Defendants/Respondents

Before: The Hon. Justice Parker

Appearances: Ms Blair Leahy KC of Counsel instructed by Mr Guy Cowan, Ms Nienke Lillington and Ms Katie Logan of Campbells LLP for the Plaintiff/Applicant

Mr Vernon Flynn KC of Counsel instructed by Mr Andrew Johnstone, Ms Jessica Williams, Ms Caitlin Murdock and Ms Kelsey Sabine of Harney Westwood & Riegels for the Defendants/Respondents

Heard: On the papers

**Draft Ruling
circulated:** 17 July 2024

Ruling delivered: 31 July 2024

Directions ruling - interim stay - narrative on financial statements - threshold value on disclosure of information - reminder of Overriding Objective and the need for sensible compromise

RULING

Introduction

1. This is a ruling on the outstanding items in dispute between the parties in respect of the terms of the injunction order (“the “Order”) relating to the Judgment of 23 May 2024. That Judgment is being appealed by the Respondents
2. Following a hearing on 20 June 2024, the parties have been liaising to try to reach an agreement regarding the terms of the Order but have been unable to do so. The Court has held that the SCSB Balances and the monies in the ‘disputed ownership account’ held by the US Bankruptcy Court for the Southern District of New York (“the PP Funds”) (together the “Funds”) should be transferred into an escrow account in the joint names of the parties (“the Transfer Order”).
3. The Court had indicated that the parties should agree the escrow arrangement by Monday 24 June 2024 but to date no escrow arrangement has been agreed and there remain other points of contention in relation to the Order.
4. The parties have helpfully provided the Court with an agreed letter and marked up terms of the Order signifying the opposing contentions. Nonetheless the Court expresses its disappointment and concern that a number of items continue to be batted between the parties without sensible compromise.
5. There is to be a hearing on 30 July 2024 which will deal with the Respondents’ substantive application for a stay of the Order pending the appeal and for a carve out for legal and business expenses.

Decision

Clause 1 - Whether an interim stay should be granted pending the hearing on 30 July 2024, or whether the Funds should be transferred to a Nominated Account with the Grand Court pending the hearing

6. The Applicant says no interim stay should be granted. It proposes that the Funds be transferred to a Nominated Account with the Grand Court pending the 30 July 2024 hearing.
7. The Respondents say an interim stay should be granted. They do not agree that the Funds should be transferred to a Nominated Account with the Grand Court.
8. This would appear to be the most urgent issue that requires resolution.
9. The Court has carefully considered the competing arguments and the relevant case law¹. It approaches the matter having primary regard to the interests of justice and the balance of convenience.
10. Clause 1.3 of the Order requires the Respondents not to in any way dispose of, deal with or diminish the Funds pending payment into Court or into an escrow account.
11. The Court does not now think it is necessary for the Funds to be transferred into Court prior to the hearing on 30 July 2024, in circumstances where there is an administrative effort and cost involved in the transfer to the Cayman Court and the hearing is less than two weeks away. In addition, the Court takes into account that the Respondents might succeed in their application for a stay and for a carve out of expenses.
12. The Respondents are subject to a Court Order (with penal consequences for a breach) that they are not allowed to utilise the Funds in any way in the interim and there is no evidence to suggest that they have done so or would do so.
13. That position is sufficient protection for the Applicant up until the hearing on 30 July 2024 when the Court will further consider the matter. It follows that there should be a short interim stay.

Clause 2.1 - Narrative on account statements

14. It may be that SCSB's bank statements do not contain narratives. Nevertheless, Mr Yoshida should provide sufficient information to verify the spending that the Applicant wishes to understand. He will be under an obligation to provide an affidavit setting out full particulars of each transaction for

¹ *Re AquaPoint LP* (unreported, Grand Court, 5 October 2022) per Doyle J at [20] (as cited with approval by the CICA in *Re Trina Solar Ltd* (unreported, CICA, 4 August 2023)).

the relevant period above a certain value (see below). In addition, he is to provide sufficient detail of expenditure to allow the Applicant to understand how the money has been spent.

Clause 2.2 – Disagreement as to the threshold value for disclosure of transactions

15. The Court again reminds the attorneys of the Overriding Objective. It should not be necessary to trouble the Court in relation to the matters in dispute under this item. The Court has nonetheless reviewed the matter and directs that the threshold value under which the Respondents are not required to provide information in relation to their expenditure is US\$7,500. The Court has taken into account that this will involve a detailed review of bank statements dating back to June 2021 in order to identify the transactions and locate supporting documents which meet this threshold, and which will then be put in an affidavit.
16. The Court is content that if a transaction concerns the reimbursement of various expenses the Respondents shall only be required to set out the full particulars of those individual items above the value of US\$7,500 to cater for the situation where a corporate Respondent has made a lump sum reimbursement payment.

Clarity on Mr Yoshida's individual expenses

17. The Court does not agree that only limited particulars need to be provided in relation to Mr Yoshida's expenses. Sufficient particulars need to be provided so that the Applicant can understand the nature and purpose of the expenditure.

Clause 2.3 – Stay of 2.1 and 2.2 pending the resolution of the Summonses

18. The Respondents seek an interim stay of their disclosure obligations over the hearing to take place on 30 July 2024.
19. Applying the same principles that were applied in relation to Clause 1 above, the Court primarily approaches this issue on the basis of the interests of justice in this particular case. It has also reviewed *Republic of Angola v Perfectbit Ltd* at [8] & [37 et seq.] in relation to the approach necessary in cases of this nature.
20. The Court directs that there is an interim stay of the Respondents' disclosure obligations up until the hearing on 30 July 2024 when the Court will reconsider the matter.

Schedule 1(3) – collateral use of information

21. The Court will not determine this issue on the papers. No permission is granted in the interim. Instead, the Court will be assisted at the hearing on 30 July 2024 by written arguments and evidence (if required) submitted in advance, so that it can properly consider the Applicant’s position and the Respondents’ objection.

Need for/Identity of escrow agent

22. The Court will not determine the details of the escrow arrangement on the papers and reminds the attorneys (yet again) of the Overriding Objective, and of consequential costs sanctions if the conduct of the parties or the attorneys is adjudged to be unreasonable.



THE HON. MR. JUSTICE RAJ PARKER
JUDGE OF THE GRAND COURT