



**IN THE GRAND COURT OF THE CAYMAN ISLANDS  
CIVIL DIVISION**

**CAUSE NO. G 51 OF 2021**

**BETWEEN:**

**SAMIR BANDALI**

**Plaintiff**

**AND**

**(1) COINPAYMENTS INC.**

**(2) OLEKSANDR ALEKSANDROV**

**Defendants**

**Appearances:** **Mr. Mark A. Russell and Ms. Naomi Veniot of KSG Attorneys for the Plaintiff**

**Before:** **Hon. Justice Richard Williams**

**Hearing:** **8 November 2021**

**Perfected transcript:** **9 November 2021**

**HEADNOTE**

*Application for freezing injunction – Post-default Judgment.*

**TRANSCRIPT OF EX TEMPORE RULING**

**The Application**

1. I have before me for determination this afternoon the Plaintiff's ex parte application for a freezing injunction to be made against the Second Defendant. The terms of such are set out in a draft order at Tab 1 in the bundle, which is attached as Schedule A to the Plaintiff's Summons at Tab 1 of the bundle. The orders primarily relate to two pieces of real estate owned by the Second Defendant in the Cayman Islands, namely the properties registered at Block 5B, Parcel 362 and at Block 12C, Parcel 236.



## **The Hearing**

2. I have been referred to and have considered:
  - 2.1 The oral submissions made by Counsel for the Plaintiff; and
  - 2.2 The bundle provided to the Court and, in particular, the skeleton argument filed on the behalf of the Plaintiff, the Writ of Summons and Statement of Claim, the affidavits sworn by the Plaintiff on 4 November 2021 and 17 March 2021.
  
3. I am satisfied that it is appropriate for me to hear this application ex parte, because if the Second Defendant was put on notice, that would increase the risk of dissipation of the relevant assets.
  
4. Having considered the above material, I am able to now give an ex tempore ruling. A perfected transcript of this ruling will be provided to Plaintiff and he should provide a copy to the Second Defendant.

## **The Background**

5. The proceedings commenced by a Writ of Summons and Statement of Claim dated 12 March 2021. The First Defendant is CoinPayments Inc (CP Cayman) and it carries out business from the Cayman Islands offering worldwide cryptocurrency merchant processing services and individual cryptocurrency accounts. The Second Defendant is Oleksandr Aleksandrov and he is the Chief Executive Officer of the First Defendant and one of its two directors. Although he was previously living in the Cayman Islands, the Second Defendant is currently residing in Dubai.



6. The details of the claim are set out in the Statement of Claim and also in some detail in the affidavit sworn by the Plaintiff on 15 March 2021. Very briefly, the Plaintiff claims that the Second Defendant stole over US\$2,800,000 worth of cryptocurrency owned by him. He contends that his causes of action against the Second Defendant are for:
- (i) unlawful interference or causing loss by unlawful means, for causing the First Defendant to unlawfully remove the 19.9MM from his account, unlawfully close the account and unlawfully refuse to return to him any of the cryptocurrency held in his account as of 12 July 2019;
  - (ii) intentional interference with contractual relations, causing the First Defendant to breach the CPS Allocation Contract<sup>1</sup>; and
  - (iii) unlawful means conspiracy, for agreeing with, at least, the First Defendant, to take the actions described above against him with intent to cause him loss.
7. A series of orders were made by Ramsay-Hale J permitting personal service out of the jurisdiction and then substituted service on the Second Defendant. On 3 August 2021, the Learned Judge made orders for substituted service by three different means and permitted the Second Defendant to have 28 days from the date of service upon him to file his Acknowledgement. On 10 September 2021, The Clerk of Courts, presumably having reviewed the Affidavit of Service of Joeniel Bent sworn on 6 September 2021, made a Default Judgment for damages to be assessed in relation to the Second Defendant. The Second Defendant has not taken any steps to set aside the Default Judgment or to engage in the litigation.

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<sup>1</sup> The Plaintiff contends that is a contract between the First Defendant and the Plaintiff whereby the former agreed to allocate 25,000,000 CoinPayments coin to the latter as part of his compensation for work on a CPS project.



## The Law

8. As this application is brought ex parte, it is still appropriate for the Court to remind itself of matters it should consider. The orders sought before me may be viewed as draconian measures, they should not be regarded as orders the making of which is the norm. A freezing injunction must not be granted without careful consideration. I have a general power to grant such an injunction in any situation where it is ‘just and convenient.’ When exercising my discretion, I remind myself that an order may impose considerable pressure upon a defendant and must not be used simply to impose such pressure. The injunction should only be granted where the applicant has a reasonably clear (‘good arguable’) case for an ascertainable sum and where there is a real risk that assets currently available will not be available when a judgment is obtained.
9. In the present matter, there is a Default Judgment entered against the Second Defendant. As stated by Gross LJ at paragraph 40 in *Emmott v Michael Wilson & Partners Ltd* [2019] EWCA Civ 219:

*“It is now settled law that Mareva injunctions can be granted post – judgement in aid of execution, whether or not an initial (pre-judgment) Mareva has been obtained. Here too, the purpose of the Mareva is to prohibit the dissipation of assets.”*

Gross LJ added at paragraph 44:

*“..., The mere fact that a Mareva is sought post-judgment does not mean that the Court is relieved from considering whether the application accords with the purpose underlying the grant of such relief. That said, there can be no doubt that the fact of an unsatisfied judgment debt - as contrasted with a pre-judgment claim for unliquidated damages-does make a difference. Given the policy of the law*



*weighing heavily in favour of the enforcement of judgments, it would be surprising if it did not.”*

10. In *Jet West Ltd v Haddican* [1992] 1 WLR 487, Lord Donaldson of Lynton, M.R., stated at page 490H:

*“...a Mareva injunction can be granted or can be continued in support of any judgment or order of the court for the payment of money, whether or not the exact sum which will be payable has been quantified at the date of the order and the date at which the Mareva injunction is sought.”*

11. I remind myself of Mustill J’s observations in *The Niedersachsen* [1983] 2 Lloyd’s Rep 600 at 605, where he states that the case must be:

*“more than barely capable of serious argument, but not necessarily one which the judge considers would have a better than 50% chance of success.”*

12. The Plaintiff highlights that Peter Macdonald Eggers QC (sitting as a Deputy Judge of the High Court) reiterated the test for making freezing injunctions at *paragraph 12* in his judgment delivered in *FM Capital Partners Ltd v (1) Frederic Marino (2) Aurelien Bessot (3) Yoshiki Ohmura (4) Marit Sjovaag* [2018] EWHC 2612 (Comm), where the Learned Judge stated:

*“The granting or continuation of a freezing order depends on a number of considerations, in particular (1) the applicant’s right of action against the respondent must be sufficiently arguable (at least there must be a good arguable case), (2) there must be a real risk that a judgment against the respondent may not be satisfied because of an unjustified or unjustifiable disposal of or dealing with the respondent’s assets (often described as “a real risk of dissipation of assets” by way of shorthand), demonstrated by solid evidence, and (3) the*



*granting or continuation of the injunction must be just and, in the balance, address, the parties' respective convenience, allowing the Court a discretion to refuse injunctive relief in any particular case on demonstrable grounds."*

13. In the matter before me, and I stress based on the information before me which at this stage is only from the Plaintiff, I am satisfied, having regard to the nature and factual background to the claim and the submissions set out at paragraphs 28 to 31 in the Plaintiff's Skeleton Argument, that there is a good arguable case. In addition, I have regard to the fact that a Default Judgment has been entered for lack of appearance or defence by the Second Defendant and that, therefore, he may be regarded as having admitted the elements the claims required to establish the causes of action pleaded against him in the Writ and Statement of Claim.

14. There must then be some evidence to satisfy the Court that, as Kerr LJ stated in *Nemia Maritime Corp v Trave Schiffahrtsgesellschaft mbH & Co* [1984] 1 all ER 398, CA at 419h, there is a:

*"real risk that a judgment or award in favour of the plaintiff would remain unsatisfied."*

15. The Plaintiff has drawn the Court's attention to the following helpful guidance about the applicable principles given by Peter MacDonald Eggers QC at paragraphs 15-16 in *FM Capital Partners Ltd*, where he stated:

*"15. In considering whether or not there is a risk of dissipation of assets, I have in mind the summary of the applicable principles recently provided by Mr Justice*



*Popplewell in Fundo Soberano de Angola v dos Santos* [2018] EWHC 2199 (Comm), at para. 86:

"The relevant principles have been summarised in a number of recent authorities, themselves referring to many earlier authorities, including *National Bank Trust v Yurov* [2016] EWHC 1913 (Comm) at paragraph [70] per Males J; *Holyoake v Candy* [2017] 3 WLR 1131 at paragraphs [34] and [59] per Gloster LJ; and *Petroceltic Resources v Archer* [2018] EWHC 671 (Comm) at paragraph [21] per Cockerill J. The following aspects are of particular relevance to the current applications:

(1) The claimant must show a real risk, judged objectively, that a future judgment would not be met because of an unjustified dissipation of assets. In this context dissipation means putting the assets out of reach of a judgment whether by concealment or transfer.

(2) The risk of dissipation must be established by solid evidence; mere inference or generalised assertion is not sufficient.

(3) The risk of dissipation must be established separately against each respondent.

(4) It is not enough to establish a sufficient risk of dissipation merely to establish a good arguable case that the defendant has been guilty of dishonesty; it is necessary to scrutinise the evidence to see whether the dishonesty in question points to the conclusion that assets are likely to be dissipated. It is also necessary to take account of whether there appear at the interlocutory stage to be properly arguable answers to the allegations of dishonesty.

(5) The respondent's former use of offshore structures is relevant but does not itself equate to a risk of dissipation. Businesses and individuals often use offshore structures as part of the normal and legitimate way in which they deal with their assets. Such legitimate reasons may properly include tax planning, privacy and the use of limited liability structures.

(6) What must be threatened is unjustified dissipation. The purpose of a freezing order is not to provide the claimant with security; it is to restrain a defendant from evading justice by disposing of, or concealing, assets otherwise than in the normal course of business in a way which will have the effect of making it judgment proof. A freezing order is not intended to stop a corporate defendant from dealing with its assets in the normal course of its business. Similarly, it is not intended to constrain an individual defendant from conducting his personal affairs in the way he has always conducted them, providing of course that such conduct is legitimate. If the defendant is not threatening to change the existing way of handling their assets, it will not be sufficient to show that such continued conduct would prejudice the claimant's ability to enforce a judgment. That would be contrary to the



*purpose of the freezing order jurisdiction because it would require defendants to change their legitimate behaviour in order to provide preferential security for the claim which the claimant would not otherwise enjoy.*

*(7) Each case is fact specific and relevant factors must be looked at cumulatively."*

*"16. In Orwell Steel (Erection and Fabrication) Ltd v Asphalt and Tarmac (UK) Ltd, Farquharson, J suggested that this requirement of a real risk of dissipation of assets was perhaps more readily satisfied by the existence of such a judgment establishing the respondent's liability. To like effect is the decision of Teare, J in Great Station Properties SA v UMS Holdings Ltd [2017] EWHC 3330 (Comm), where the judge said (at para. 63):*

*"These dicta all show that the policy of the law is to enforce judgments ... so that freezing orders can, in an appropriate case, be granted after judgment. They also show that such orders may more readily be made after judgment than before. That may be because it is easier to infer a risk a dissipation. Thus, in Distributori Automatici Italia v Holford General Trading [1985] 1 WLR 1066 at p.1073 Leggatt J. cited with approval the dictum of Farquharson J. in Orwell Steel v Asphalt and Tarmac [1984] 1 WLR 1097 that "in one sense it could be said that there is greater justification for restraining a defendant from disposing of his assets after judgment than before any claim has been established against him." Leggatt J. agreed that "grounds for believing that the judgment debtor would dispose of his assets before execution might perhaps be more readily established after judgment than before." It may also be because factors which are said to weigh against the making a freezing order (for example delay or the absence of assets within this country and the presence of related proceedings in another jurisdiction, two of the factors relied upon in this case) have less weight where judgment has already been obtained. In circumstances where judgment has been given and there is solid evidence of a real risk of dissipation there would have to be particularly strong grounds for refusing freezing order relief."*

16. I have regard to and apply these principles. I am satisfied that the Second Defendant has assets in the jurisdiction, in particular the two above-mentioned real estate properties. The properties were acquired by the Second Defendant in 2018 and 2019 and therefore do not appear to be what the Plaintiff terms as being intended "*quick flip investments*". I note, in



paragraphs 15 to paragraph 17 of the Plaintiff's Affidavit sworn on 4 November 2021, the reasons why he feels that there is a real risk that the Default Judgment will go unsatisfied. The Plaintiff cites the Second Defendant's failure to engage in the litigation, coupled with the steps he has taken to sell the property at Block 5B, Parcel 362, which he says was listed for sale for CI\$1,495,000 only after the Second Defendant was aware of this litigation (and which may be subject to a sale purchase agreement). The risk can be viewed as having increased now that the Default Judgment has been made. The concern about that property is that, due to the nature of his actions, the Second Defendant will transfer the proceeds of sale out of the jurisdiction. It is contended that the actions, and the timing of the same, are evidence that the Second Defendant will seek to liquidate his assets in the Cayman Islands, then transfer them out of the jurisdiction in order to frustrate any enforcement of the Default Judgment.

17. I note that the Second Defendant no longer resides in the Cayman Islands. The fact that he placed one of the properties on the market shortly after being made aware of these proceedings and that he has likely sold that property is a very relevant consideration. If one or both of the properties are sold, the movement of the proceeds of sale out of the jurisdiction would likely frustrate the enforcement of the Judgment. The timing of the sale of Block 5B, Parcel 362, is evidence that supports a contention that the Second Defendant was seeking to prejudice the Plaintiff's ability to enforce the Judgment. His actions in relation to the property when he was and continues to fail to engage in the litigation increases this concern, especially as his residence is now out of the jurisdiction.



18. I am satisfied, and I again reiterate it is only having received and considered the evidence from the Plaintiff at this stage, that there is a real risk of unjustified dissipation.
19. I have considered the balance of convenience. If these two properties or the proceeds of sale of one or both of these two properties of which the Second Defendant is the sole owner are dissipated that will, on the information before me about the Second Defendant's assets in the jurisdiction, seriously hinder enforcement of the Default Judgment. Counsel for the Plaintiff submits that:

*"It is unlikely that the default judgment would be recognised and enforced in Dubai."*

The Court has been informed that the Second Defendant has significant assets out of the jurisdiction, including "*significant cryptocurrency assets*" and therefore the making of a freezing injunction will not unduly hinder his ability to fund his day-to-day expenses.

### **The Order**

20. At paragraph 13 of the Plaintiff's Affidavit sworn on 4 November 2021 he sets out the reasons why he submits that his claim is in excess of US\$10,000,000. It would clearly be wrong for me to find at this stage that the figures quoted are accurate, but one can see, albeit only on the evidence that is before me at this time, that they are at least arguable. In considering the level of the amount to be restrained, I have regard to the size of the claim. The size of the claim and the evidence contained in the affidavit, leads me to the conclusion that a real likelihood of dissipation of the relevant assets, which may frustrate a judgment, exists.



21. When considering the terms of the draft order, I am satisfied that it is appropriate to make an order in the terms of paragraph 1 and 2 but with slight amendments to the content and numbering. Paragraph 1.1 and paragraph 1.2 will now read at the end:

*“...if the property has been or is sold.”*

There will be a new paragraph 2 inserted which will read:

*“Nothing in paragraph 1 prevents the sale of the real property with the consent of the Plaintiff if there is, as of the date of this order, a signed sale purchase agreement between the Second Defendant and a bona fide purchaser, but only if any proceeds of sale are retained in the Cayman Islands.”*

Paragraph 2 in the draft order will now be renumbered as paragraph 3. I have amended the draft order in this way to enable any bona fide sale of the properties to proceed with the consent of the Plaintiff, minimising any prejudice or disruption to a third party purchaser acting in good faith whilst preserving the proceeds of sale from the asset.

22. I also grant the discovery order sought at paragraph 3 (which now becomes paragraph 4), but I add to the order that:

*“the information obtained on discovery must not be used other than for the purposes of this action.”*

23. In relation to the exceptions to this order I am content with the provisions contained paragraphs 4 to 11 of the draft order (now paragraphs 5-12). This is because I have been informed by the Plaintiff that the Second Defendant is living in Dubai and that he has substantial assets out of the jurisdiction enabling him to meet his reasonable day to day

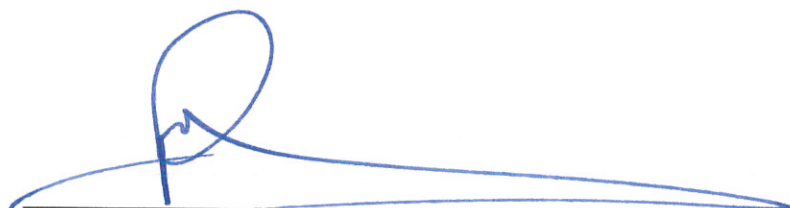


expenses. I am also am satisfied because the new paragraph 2 addresses the potential inconvenience to a third party purchaser of the relevant properties.

24. The undertakings mentioned in paragraph 12 (now paragraph 13) and set out in Schedule 1 are appropriate.
25. Having regard to the effect of this order, I have considered whether a return date should be set out in paragraph 14 (now paragraph 15). However, due to the Second Defendant's lack of engagement in the proceedings to date, I do not set a return hearing date and I am satisfied that the term in paragraph 14 will enable the Second Defendant to have the injunction proceedings promptly come on before a Judge if that is what he seeks. If a return date hearing is listed that may be heard by any Judge and the Second Defendant must file and serve his affidavit at least two working days prior to that hearing.
26. Costs are reserved.
27. A copy of the order made by me is provided to the Plaintiff's attorney and a copy has been sent, via my Personal Assistant, to the Civil Registry to be sealed. The Plaintiff's attorney will need to undertake to pay the fees and hopefully a copy of the sealed order will then be made available to him later this afternoon.

### **Full and Frank Disclosure Observation**

28. The Plaintiff has a duty to give full and frank disclosure at this ex parte hearing. With this in mind, at paragraph 19 in the Plaintiff's Affidavit sworn on 4 November 2021, under the heading "Full and Frank Disclosure", he highlights two matters. The first matter he highlights is the fact that the First Defendant is defending the claims and disputes any liability and that the causes of action against the Second Defendant rely on unlawful conduct on the part of the First Defendant. He notes that, if the First Defendant successfully defends the claims, the reliability of the Default Judgment may be in doubt. The second matter that he highlights is that there is no direct evidence that Second Defendant intends to sell the property at Block 12C, Parcel 236.



**The Hon. Mr, Justice Richard Williams**  
**Judge of the Grand Court**