



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

**CAUSE NO. FSD 162 OF 2019 (RPJ)**

**NEUTRAL CITATION NUMBER: [2025] CIGC (FSD) 109**

**BETWEEN:**

**RAIFFEISEN BANK INTERNATIONAL AG  
(a company incorporated in Austria)**

**PLAINTIFF**

**AND:**

**(1) SCULLY ROYALTY LTD  
(a company incorporated in the Cayman Islands)**

**FIRST DEFENDANT**

**(2) LTC PHARMA (INT) LTD.  
(a company incorporated in the Marshall Islands)**

**SECOND DEFENDANT**

**(3) MERKANTI HOLDING P.L.C.  
(formerly MFC Holding Ltd, a company incorporated in Malta)**

**THIRD DEFENDANT**

**(4) 1178936 B.C. LTD.  
(a company incorporated in British Columbia, Canada)**

**FOURTH DEFENDANT**

**(5) GARDAWORLD, CN. LTD.  
(formerly MFC 2017 II LTD, a company incorporated in the Marshall Islands)**

**FIFTH DEFENDANT**

**(6) 1128349 B.C. LTD.  
(a company incorporated in British Columbia, Canada)**

**SIXTH DEFENDANT**

**(7) IEM SERVICES CO. LTD  
(a company incorporated in the Marshall Islands)**

**SEVENTH DEFENDANT**

**(8) LTCM ASSETS PRIVATE LIMITED**  
**(a company incorporated in Liberia)**

**EIGHTH DEFENDANT**

**(9) MICHAEL JOHN SMITH**

**NINTH DEFENDANT**

**(10) MERKANTI HOLDING P.L.C.**  
**(formerly 777 Royalty Ltd, a company incorporated in the Marshall Islands) [Intended]**

**TENTH DEFENDANT/RESPONDENT**

*Policing of world-wide freezing orders - Asset disclosure - Ex parte on short notice - jurisdiction - section 37 English Senior Courts Act 1981 - Section 11 Grand Court Act (2015 Revision) - practical utility - proportionality - disclosure of all substantial assets irrespective of the level of any cap set on freezing orders to allow policing of the order and avoid risk of assets being dissipated and judgment remaining unsatisfied.*

### **DECISION**

1. The Court heard an application on 26 September 2025 brought by RBI that D1 and intended D10 provide fresh asset disclosure in order to enable RBI (and the Court) to effectively police the worldwide freezing order (WFO) made by the Court of Appeal against D1 dated 7 February 2022 and certain undertakings to the Court, promised by the intended D10.
2. Tim Penny KC appeared for RBI. Jennifer Colegate appeared for D1 and the intended D10. D10 has consented to be joined to these proceedings.
3. After hearing argument, the Court granted RBI's application, with some modifications to the terms of the Orders sought (both at the hearing and subsequently) and these are short reasons for that decision.

*Jurisdiction*

4. The Court has the power “to make whatever ancillary orders are necessary to make [its] freezing order[s] effective”<sup>1</sup>. This power arises out of section 37 of the English Senior Courts Act 1981<sup>2</sup>.
5. Section 37 applies in Cayman by virtue of section 11 of the Grand Court Act (2015 Revision) given the absence of an analogous power under the Grand Court Act<sup>3</sup>.
6. It is well-established that the jurisdiction granted by section 37/section 11 provides the Court with the power to make updated, and more wide-ranging asset disclosure orders where that is just and convenient to ensure the effectiveness of earlier orders<sup>4</sup>.
7. The essential principles as to the basis on which such orders may be made can be shortly stated:
  - a) Any order for additional asset disclosure must have “practical utility” and be proportionate to the objective sought<sup>5</sup>.
  - b) The Orders made in freezing injunctions and ancillary relief are to be strictly interpreted. They are not to be used for collateral purposes such as to expose inconsistencies and improve evidence for contempt of court applications<sup>6</sup>.
  - c) One instance where it is just and convenient to order further disclosure is where there is a real risk that there has been a dealing with assets contrary to the freezing order(s) made<sup>7</sup>.
  - d) The fact that the information sought is confidential will not by itself entitle the respondents to resist disclosure<sup>8</sup>. However, the Court will be astute to ensure that

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<sup>1</sup> *Perry v Lopag* [KY 2024 GC 120], per Segal J at [15]

<sup>2</sup> *JSC Mezhdunarodniy PromyshlennyBank v. Pugachev* [2016] 1 WLR 160 (EWCA), per Lewison LJ at [47]

<sup>3</sup> *Banco Internacional de Costa Rica SA v Banana International Corporation* [2018] CIGC J0807-1, per Kawaley J at [7]

<sup>4</sup> *PSJC Commercial Bank Privatbank v. Kolomoisky* [2018] EWHC 482 (Ch), per Joanna Smith QC sitting as a deputy at [33(2)]; *Perry* at [15]

<sup>5</sup> *Perry* at [16] citing *JSC MP Bank v. Pugachev (No. 2)* [2016] 1 WLR 781 (EWHC), per Hildyard J at [38]-[40]

<sup>6</sup> See *Hildyard J in Pugachev (No 2)* *ibid*

<sup>7</sup> *Allergy Therapeutics (UK) Ltd v. Inflamm Research Inc* [2019] EWHC 2526 (Comm) at [29], per Moulder J

<sup>8</sup> *Kolomoisky* at [33(6)]

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confidential material and non-public information is safeguarded by appropriate restrictions.

- e) In practice the order will contain carveouts against self-incrimination so that, if advised, a defendant does not have to provide information that would incriminate it.

*Plaintiff's arguments*

8. Mr Penny sought orders in respect of D1 which mirrored the previous asset disclosure orders albeit value at the present date, and required disclosure of its non-Schedule 1 assets in excess of a certain amount. This was to enable RBI to verify any future assertions that dealing with the Schedule 1 assets do not engage the WFO by reason of the cap set by the Court of Appeal on 7 February 2022. If RBI is given disclosure of D1's significant assets it will be possible to assess whether there has been a dealing bringing the value of D1's total unencumbered assets to below the cap.
9. Mr Penny also asked for disclosure of the current structure of all shareholdings held by D1 and its subsidiaries in order to allow RBI to police the order and verify any future controversy that a particular asset has not left the group.
10. In order to understand the present position and guard against any future changes, RBI also wished to know what changes had occurred since the provision of D1's existing asset disclosure.
11. Mr Penny argued that because of RBI's lack of trust given the MFC Group's conduct identified in the lengthy litigation to date, and which gave rise to the original freezing orders, it required information to be verified by an affidavit sworn by Mr Smith (D9) (D1's Executive Chairman and Director) and verified by Mr Morrow (D1's CEO, CFO and Director).
12. RBI also asked for D1's statutory auditors to confirm that the values of the assets stated represented a reasonable valuation.
13. Similar orders were sought, with certain modifications, against 777 Royalty Limited (D10).

*Defendants' arguments*

14. Ms Colegate sought to persuade the Court that it should not exercise its jurisdiction to make the orders applied for because the proper policing of the WFOs granted against D1 (and former D5) does not require that D1 provide further disclosure, nor was it appropriate that the intended D10 provides disclosure.
15. She also argued that the terms of disclosure sought were grossly disproportionate.
16. She relied on paragraphs 2, 3 and 4 of the WFO to argue that the restriction on the disposal and dealing by D1 of assets identified in Schedule 1 did not apply so long as the total net assets owned by D1 exceeded the EUR 153m threshold, and that any disposal or dealing by D1 of any of its assets does not have the effect of reducing D1's assets below that threshold. She also argued that it was D1's position that this threshold was now set at a disproportionately high level.
17. Moreover, Ms Colegate submitted that D1, as the parent of the MFC Group, produces accounts on a consolidated basis in respect of its assets, be they owned directly or indirectly. The threshold amount was key to determining how the Court can best police the application of the WFO because the terms would only be triggered to prevent dealings and disposals where on a consolidated basis the threshold was to be breached.
18. It followed in her submission that insofar as the audited consolidated accounts showed that the assets of D1 remained in excess of the threshold, D1 was at liberty to deal with its assets directly and indirectly and still remain within the terms of the WFO without recourse.
19. Furthermore, she pointed out that D1 is a listed and regulated entity and so is required to provide regular reports to regulatory bodies such as the Securities and Exchange Commission and the New York Stock Exchange regarding its net asset position on a consolidated basis.
20. As the parent company of the MFC Group it also produces audited accounts on a half yearly basis and that, she submitted, ought to be enough for this Court to accept that D1 holds one or more assets which are valued in excess of the threshold and so there should be no further disclosure.

21. She submitted that proportionality dictated that no further asset disclosure was necessary in circumstances where D1 had agreed to provide extrinsic evidence and comfort that the value in which it had a direct or indirect interest remained in excess of the threshold.
22. There was therefore no practical utility in requiring her clients to be put to the cost and time-consuming effort of disclosing all of its shareholdings and interest in other assets as RBI required by the terms of its suggested order.

## Discussion

### *Context*

23. RBI's claim in this litigation is substantial in value and the various defendants to it operate complex offshore structures and entities which hold diverse assets and are domiciled in different jurisdictions<sup>9</sup>.
24. In very simple terms the claim alleges that RBI is the victim of a fraudulent conspiracy designed to asset strip the former parent company of the MFC Group (D2) which allegedly gave guarantees in connection with a credit facility. The MFC defendants dispute the right of RBI to call on the guarantees and dispute the transactions pleaded by RBI which are said to have enabled the asset stripping.
25. The parties have had disagreements going back to 2019 about important matters relating to the interpretation of the original WFO<sup>10</sup> and the defendants have engaged in multiple corporate reorganisations over recent years<sup>11</sup>.

### *Urgency*

26. The Court is satisfied that when it learned about the merger transaction which has caused this application to be brought, RBI acted promptly in requiring asset disclosure on 10 September 2025. It then engaged in correspondence through attorneys prior to making the application. The Court is also satisfied that the matter was required to be heard urgently, effectively *ex parte* on short notice<sup>12</sup>.

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<sup>9</sup> Including the Cayman Islands, Canada, Malta, the Marshall Islands and Liberia

<sup>10</sup> See Constable 3 § 10.3

<sup>11</sup> *Ibid*, §10.5-10.9

<sup>12</sup> *Falcon 5 Newco Ltd v Kiwi GP Cayco Ltd [2025] CIGC (FSD) 78 per Doyle J at [16]*  
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27. The Court was asked to fit the application in at the end of a two-day CMC. B&P, recently instructed for D1, D3 to D7 and the intended D10, made an application to adjourn on behalf of D1 and the intended D10, which was refused.
28. The matter proceeded to be heard on day two of the CMC. It cannot be fairly said that B&P had much time to prepare, and no evidence was adduced for D1 or the intended D10, although Ms Colegate did manage in the time available to submit a helpful written argument.

*Facts as put forward by RBI*

29. The circumstances which gave rise to RBI's application, were as follows. The narrative is taken from Mr Constable's third affidavit of 22 September 2025.
30. On 5 September 2025 RBI was sent a notice of change of attorneys for the defendants which did not include D5. It made inquiries and learned on 9 September that D5 was dissolved in the Republic of the Marshall Islands (where it was domiciled) on 1 August 2025 and had been merged into another company called 777 Royalty Limited (777).
31. The Court has not been provided with any evidence about the effect of the plan of merger as a matter of Marshall Islands law.
32. D5 was subject to a freezing order granted by the Court of Appeal on 7 February 2022 (the D5 WFO), which prohibits D5 from disposing of or dealing with any of its assets listed in Schedule 1 of the D5 WFO (§1), and requiring D5 to give RBI 21 days prior written notice in respect of any disposing of or dealing in respect of Schedule 1 assets which are not D5's assets (§4) (both subject to a cap of EUR 153m, such that D5 was required to retain assets of at least EUR 153m).
33. The cap in the D5 WFO (in §§4 and 6) is defined by reference to the unencumbered value of D5's assets. It is important to understand that it does not depend on the assets in the wider MFC Group.
34. Among D5's direct assets as at the time of the latest asset disclosure provided on its behalf, being Morrow 7 dated 22 July 2020, were the shares of 1178936 BC Ltd (D4) and the shares of 1128349 BC Ltd (D6), who between them hold the MFC Group's interest in the Scully Mine (which itself is a Schedule 1 asset, albeit one indirectly held by D5).

35. The Scully Mine represents a significant asset and any dealing with D5's direct interest in both D4 and D6 has naturally been taken very seriously by RBI.
36. B&P confirmed that D5's dissolution came about as a consequence of the merger of D5 into 777 (D10) which was renamed to be given the exact same name as D3, and all of D5's assets are now vested in D10. They also confirmed in correspondence that D10 was also within the MFC Group and had been conducting itself as though it were bound by the WFO in respect of D5.
37. Furthermore B&P disclosed through documents, that prior to the merger, in a separate transaction, all of D1's shares in D5 had been transferred to a company called Bond and Share Administrators Limited (Bond)<sup>13</sup>. Bond is not a party to the litigation or the WFO obtained by RBI.
38. Mr Penny KC made clear, and the Court accepts, that RBI does not need to establish for present purposes that there was a breach of the D5 WFO. The question is whether there is a real risk of assets having been or continuing to be used contrary to the terms of the D5 WFO.
39. The Court finds that these events have not been properly explained either to RBI or the Court. As to the transaction prior to the merger, the shareholders of D10 and Bond have not been identified, nor has the jurisdiction in which Bond is incorporated. The purpose of the transfer of the shares to Bond has also not been explained.

#### *Decision*

40. The Court is satisfied in the circumstances that it is just and convenient to grant the further asset disclosure sought. The Court is satisfied that there is a real risk that there has been a dealing in D5's assets otherwise than in accordance with the D5 WFO.
41. The dealing takes the form of the shares in D4 and D6 now vesting in D10, having been removed from D5, with an adverse ownership interest being created in D10<sup>14</sup>.

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<sup>13</sup> D5's shares were valued at C\$272,714,000 in June 2020 -Morrow 3, 22 June 2020

<sup>14</sup> *The General Electric Co plc v The Plessey Co plc* (EWCA, 22 March 1989) [1989] WL 1720499, at pp. 9-12 as cited in *Navigator Equities Ltd v Deripaska (No 5)* [2020] EWHC 1798 (Comm) per Andrew Baker J at [108]

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42. The Court is also satisfied that there is a real risk of assets having been, or continuing to be, used contrary to the terms of the D1 WFO given that D1's shareholding in D5 has been transferred to Bond and subsumed into D10.
43. Due to previous changes (in March 2020 and March 2021) in the way in which the assets in Schedule 1 of the D1 WFO and Schedule 1 of the D5 WFO are held as set out by Mr Constable<sup>15</sup>, and the recent merger set out above, the Court is satisfied that there is doubt as to the jurisdictions in which, and how, the assets of the MFC Group are held.
44. Mr Penny KC reminded the Court of the expert report of Mr Lawler<sup>16</sup> in support of the original *ex parte* WFO application in 2019. In Mr Lawler's assessment the MFC Group structure was convoluted and had undergone several restructurings, name changes and changes of domicile which were not in his experience 'usual'. Its financial statements were complex and difficult to decipher and may comply with the letter, but did not in his view, comply with the spirit of international accounting standards. That expert evidence was of course contested, but Mr Lawler was of the view that the MFC Group provided only minimal information about its subsidiaries.
45. The Court accepts RBI's submission against this background that it is of no real comfort, as Ms Colegate pointed out, that D1 is under various regulatory obligations and files detailed accounts. Sufficient information about the assets, their value and whereabouts is necessary to police the injunction.
46. The Court accepts RBI's submission that as a practical matter it needs to know which corporate registers it should be monitoring in respect of which entities to police the WFOs it has obtained<sup>17</sup>.
47. The Court however accepts Ms Colgate's submission that a disclosure order should only be made for a purpose for which the power exists, namely to police the worldwide freezing order and should not go beyond that ambit. The Court has therefore been astute to ensure that the terms of the order for further asset disclosure are strictly necessary and do not impose an unreasonable burden on or potentially cause undue prejudice to the defendants.

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<sup>15</sup> See §§ 8-9 Constable 3

<sup>16</sup> 23 August 2019

<sup>17</sup> RBI's legal team have apparently been unable to obtain shareholder information from public registries in British Columbia where D4 and D6 are incorporated or the Republic of the Marshall Islands where D10 is incorporated and where D2 and D5 were incorporated-see Constable 3 § 19

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*The cap*

48. The Court does not accept Ms Colegate's submission that sufficient assets have been disclosed which enable RBI to police assets equating to the value of the freezing order and that RBI is not entitled to any further protection in the circumstances.
49. There is, in the Court's view, a need for further asset disclosure, including in particular with respect to the shares in D4 and D6.
50. The arguments as to the EUR 153m cap do not prevent this application succeeding. If a defendant subject to a WFO was unilaterally entitled to pick and choose which assets to deal with and then, when this is discovered and challenged, make assertions about caps not being breached it would be effectively impossible to police whether such orders were being properly complied with.
51. Whilst WFOs and asset disclosure orders are not aimed at securing a sum for judgment, taken together they put in place a regime whereby if attempts are made to dissipate assets in order to frustrate a future judgment this can be monitored and prevented, as far as possible. This is precisely the relief RBI seeks.
52. If a person subject to these orders was able to deal with assets as he chooses within a "cap" one can easily envisage a situation where third parties could press claims in advance of judgment, and that assets available for the purposes of satisfying a judgment may be put in jeopardy. Without further disclosure RBI has no visibility on the up-to-date relevant asset base.
53. Similarly, to restrict assets to those which defendants maintained were of sufficient value to meet a potential judgment could also result in assets not being disclosed or being dissipated prior to judgment.
54. The whole purpose of asset disclosure orders following WFOs obtained is to provide sufficient information to allow litigants who might successfully obtain judgment to monitor assets and make sure that unjustified disposals do not take place which could prejudice eventual enforcement and execution.

55. The Court is satisfied that D1 and D10 should give disclosure of their substantial assets, irrespective of the cap set by the Court of Appeal, to allow the policing of the order and counteract the risk of assets being dissipated and any judgment remaining unfulfilled.
56. The Court has found Gee on Commercial injunctions (7<sup>th</sup> Edition) informative in this regard:

*'The usual practice is to make an order for disclosure of "all" the assets and does not entitle the defendant to pick and choose what assets to disclose. An argument that sufficient assets have been disclosed to meet an eventual judgment depends on what may happen between disclosure and execution and depends on events which may diminish the value of assets or render them not amenable to or less amenable to execution. There may be other creditors who can execute on assets. To restrict assets to be disclosed to sufficient in value to meet the maximum sum could result in assets not disclosed, being dissipated, and an unsatisfied judgment. It would detract from the ability to monitor assets and make sure that unjustified disposals do not take place which could prejudice eventual enforcement and execution. There is no rule or practice that disclosure should be limited to assets having sufficient value to meet the maximum sum in the injunction.'*<sup>18</sup>

57. Should D1 and D10 wish to apply to reduce the cap as indicated by Ms Colegate they may wish to do, they are at liberty to do so by way of application supported by evidence.



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

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<sup>18</sup> *Gee at §23-020 and Tatneft [2018] EWHC 1314 Cockerill J*  
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