IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

Neutral Citation Number: [2025] CIGC (FSD) 53

CAUSE NO. FSD 85 OF 2025 (DDJ)

BETWEEN

(1) TARGET GLOBAL GROWTH FUND II, SCSP-RAIF
(2) ANTLER GLOBAL FUND MASTER FUND S.A.R.L. SICAV-RAIF

Plaintiffs

-and-

LIU XUN

Defendant

Before:	The Hon. Justice David Doyle
Heard:	On the papers
Draft judgment circulated:	16 June 2025
Judgment delivered:	19 June 2025

Determination of applications for costs in respect of contested application for an asset freezing injunction and a proprietary injunction – consideration of relevant law

JUDGMENT

Introduction

1. In this case the Plaintiffs obtained an asset freezing injunction and a proprietary injunction in Singapore but these were set aside by the High Court of the Republic of Singapore on jurisdictional grounds. Fresh ones were granted with the Petitioner giving an undertaking that it would commence proceedings in the Cayman Islands and apply for a similar injunction in the Cayman Islands against the Defendant before 7 April 2025.

2. The Plaintiff duly applied by way of summons dated 7 April 2025 (the "Summons"). The Summons was contested and heard on 23 May 2025 (the earliest date on which leading counsel were available) and I granted various relief on that day with my reasons being specified in a judgment delivered shortly thereafter on 3 June 2025: [2025] CIGC (FSD) 45.

3. This judgment concerns the determination of subsequent applications in respect of costs.

The written submissions

4. I have considered:

   (1) the Plaintiffs' written submissions on costs dated 6 June 2025; and

   (2) the Defendant's written submissions on costs dated 6 June 2025.

The relevant law on costs

5. As is well known, at least amongst judges and lawyers, courts in common law jurisdictions have a wide discretion in respect of costs but they usually follow the event, i.e. the successful party normally obtains an order for costs in its favour. In Cayman the position is governed by section 24 of the Judicature Act (2021 Revision), Order 62 rule 4 of the Grand Court Rules (2023 Revision), and caselaw.

6. The English Court of Appeal in *Dos Santos v Unitel S.A.* [2024] EWCA Civ 1109 gave some helpful guidance in respect of the costs of interlocutory or procedural applications. As I recorded at paragraph 45 of my judgment delivered in these proceedings on 3 June 2025, *Dos Santos* (albeit not specifically on costs) has been followed in this jurisdiction.

7. The Chancellor, Sir Julian Flaux in *Dos Santos* outlined the position in respect of costs of contested interlocutory applications as follows:

> "116. In so far as there is a general rule as to the costs of contested interlocutory or procedural applications, it is that a party who contests an application and fights it tooth and nail on every point, thereby causing the successful party to incur costs which would not otherwise be incurred, should be ordered to pay the successful party's costs at the conclusion of the application. This is clear from CPR 44.2(2) and is the general rule applied in the Business and Property Courts in relation to contested interlocutory applications. The Court will not usually reserve costs to the trial judge of, for example, a contested jurisdiction or disclosure application which the defendant has lost, merely because the defendant points out that it might succeed in defeating a claim at trial. Were it otherwise trial judges and, in turn costs judges, would be inundated with having to make rulings on costs of interlocutory applications which had been reserved by the judges who heard the applications.
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> 117. Of course the Court has a discretion to make a different order on a contested interlocutory application, including reserving the costs to the trial judge, as CPR 44.2(b) provides. One situation in which the Court will usually make an order that the costs be reserved is in the case of an *American Cyanamid* interim injunction as the authorities from *Desquenne* onwards establish. However, that is because, on the balance of convenience, the Court is prepared to grant an interim injunction which allows a party to rely upon a right or obligation, the existence of which has yet to be established, effectively holding the ring pending the trial. If at trial the right or obligation is established then the injunction can be made final and permanent or other relief granted. However if the claimant's case fails at trial, then it can generally be said that the interim injunction should not have been granted, since the right or obligation did not exist or was not established. Hence it is

generally more appropriate for the costs of the application for the interim injunction to be reserved to the trial judge.

118. However, the position is different in the case of a freezing injunction. If the claimant establishes the three criteria referred to in [6] above: (1) a good arguable case on the merits; (2) a real risk that a future judgment would not be met because of an unjustified dissipation of assets; (3) that it would be just and convenient in all the circumstances to grant the freezing injunction, then the Court will grant the injunction. When granted it is not "interim" or dependent on the balance of convenience like an *American Cyanamid* injunction, nor will the Court make the injunction final at trial, as in the case of an interim *American Cyanamid* injunction. As Edwin Johnson J pointed out at [29] of his costs judgment in *Harrington* there is no such thing as a final freezing order. Subject to any subsequent application to vary or discharge it, the freezing injunction remains in place until trial. If the claim succeeds the Court may continue the injunction post judgment but that is not the making of a final injunction. The purpose of the freezing injunction remains as set out at [85] of *Convoy Collateral*: "to facilitate the enforcement of a judgment or order for the payment of a sum of money by preventing assets against which such a judgment could potentially be enforced from being dealt with in such a way that insufficient assets are available to meet the judgment."

119. Another important distinction between a freezing injunction and an *American Cyanamid* injunction is that whereas, in the case of the latter, if the relevant right or obligation is not established at trial it can generally be said that the interim injunction should not have been granted, in the case of the former even if the claim fails at trial, it does not follow that the freezing order was not correctly granted on the basis that the claimant satisfied the three criteria for the grant of the freezing injunction. This point was made by Martin Spencer J at [52] of *Bravo* (cited at [60] above) and by Edwin Johnson J at [29] of *Harrington* (cited at [67] above) and I agree with their analysis, which I consider is to be preferred to that of HHJ Davis-White QC in *Al Assam* (although I recognise that his decision on costs may have been justified on the facts of that case). I also note that in a recent judgment handed down since the hearing of the appeal, *Cancrie Investments Ltd v Haider* [2024] EWHC 2302 (Comm), Nigel Cooper KC (sitting as a Deputy High Court

Judge) preferred the analysis in *Bravo* and *Harrington* to that in *Al-Assam*: see [20] to [31] of that judgment. In my judgment, Mr Margolin KC's "fundamental" point set out at [59] above, that if the claim failed at trial, the freezing injunction should not have been granted in the same way as in the case of an interim *American Cyanamid* injunction, is misconceived.

120. Accordingly, I consider that Bright J was entitled to reach the conclusion that Ms dos Santos should pay the costs of the freezing injunction application which she had fought and lost and that the judge exercised his discretion appropriately. I would have reached the same conclusion."

8. In *Desquenne et Giral UK Ltd v Richardson* [2001] FSR 1 a two member Court of Appeal in England and Wales dealt with costs in respect of an application for interlocutory relief against a defendant to restrain breach of a non-competition clause in his contract of employment. An interim injunction had been granted pursuant to a without notice application. The continuation of the injunction came back before the court and the injunction was continued on the basis of the balance of convenience. The judge made an order that the defendant pay costs in the assessed sum of £16,000 to be paid immediately on judgment of a preliminary issue on the validity of the clause. The Court of Appeal held that where an injunction was granted or continued on the basis of the balance of convenience (*American Cyanamid*) test in order to hold the ring until the dispute between the parties could properly be decided at trial, it was inconsistent to say that there were successful or unsuccessful parties for the purposes of the rules relating to costs. It was further held that where there were no successful or unsuccessful parties, the only proper order was that the costs of both parties were to be reserved to the trial judge because only then could it be determined which party was successful and which was unsuccessful.

9. Morritt LJ referred to the general principles in respect of costs and stated:

"12. I accept of course that the issue was one for the judge's discretion. In my view, this is one of those cases where this Court is entitled and indeed bound to interfere with that exercise. I say so for basically three reasons: the first one is that the decision seems to me to be inherently unjust. It is quite plain from the passage in the judge's judgment from which I quoted that he granted or continued the [in]junction on the basis of the balance of convenience in order to hold the ring

until the dispute between the parties could be properly decided at trial. It is inconsistent with an order such as that, that there should be successful or unsuccessful parties for the purposes of the rules either new or old.

13. Second, it seems to me that the judge was wrong, therefore, in determining, for the purposes of rule 44.3.2, that either Mr Richardson was the unsuccessful party, or, alternatively, that the employer was the successful party. He was right to consider within the terms of that rule whether to make an order about costs. That was what he did. But the order that he made was, going back to rule 44.3.1(a), whether the costs should be made payable by one party to another. That seems to me to have been wrong; there were no successful or unsuccessful parties at that stage and the proper orders to be considered were those under the terms of the practice direction to which I have referred.

14. The third reason for thinking that the judge made an error of law was in the passage in his judgment where he refers to the general rule that the Court will make a summary assessment of costs as reflected in the practice direction at paragraph 4.4.1. It seems to me that the judge there confused the decision on whether or not to make an order within 44.3.1(a) with the question of whether, having made such an order, he should then make a summary assessment of the costs so as to ascertain the quantum that would fall within it. For my part, I think, therefore, that each one of those three reasons is a sufficient and good reason for setting aside the judge's exercise of his discretion; in that event the discretion has to be exercised by this Court. It follows from what I have said already, that it seems to me that the only proper exercise must be that the costs of both parties are to be reserved to the trial judge because only then can it be determined which party is successful and which is unsuccessful."

10. Morison J agreed.

11. In *Cancrie Investments Limited v Haider* [2024] EWHC 2302 (Comm) Nigel Cooper KC sitting as a High Court Judge in England and Wales stated:

> "31. For all the above reasons I find that as matter of approach, the ordinary approach in relation to freezing injunctions is that the court should make an order for costs following the hearing of a continuation application while reserving the costs of the original without notice application. That order is that the Claimant is entitled to its costs of the Continuation Application to be assessed on the standard basis if not agreed with the costs up to and including the first return date before Dias J. to be reserved. Even if I had concluded that such an order is not consistent with the ordinary approach, it is the order which I would make in any event given the circumstances of this case (in particular as set out in paragraphs 8 and 30 above)."

12. It would appear therefore that in relation to a contested application for an asset freezing order where a defendant fights it tooth and nail on every point and is unsuccessful normally the defendant at the interlocutory stage would be required to pay the costs. In respect of applications for injunctions which engage the *American Cyanamid* test (such as applications for property injunctions) the costs would usually be reserved to the trial judge.

13. Costs however remain at the discretion of the court and the court should make the most appropriate costs order upon the facts and circumstances of each case.

Determination

14. I now turn to my determination of the various costs applications before the court.

Unusual case

15. This is a somewhat unusual case. Normally applications for asset freezing orders are made without notice to the defendant. In the case before me the application came on for hearing with notice to the Defendant which is unusual in applications for asset freezing injunctions. In view of what had happened in Singapore the application in Cayman proceeded on a with notice basis. In other cases where an asset freezing injunction is granted without notice and it is subsequently challenged either at the return date hearing or under the liberty to apply to discharge provisions, costs may also become a live issue for immediate determination rather than simply being reserved.

16. The applications for the asset freezing injunction and the proprietary injunction appear to have been filed in Cayman pursuant to an undertaking given to the court in Singapore.

Costs in respect of proprietary injunction reserved

17. Insofar as the costs in respect of the proprietary injunction are concerned these should, in my judgment, be reserved to the trial judge in accordance with the well-established principles of costs (outlined above) in that respect.

Defendant to pay costs in respect of asset freezing injunction

18. Insofar as the costs in respect of the asset freezing injunction are concerned the Defendant should pay the Plaintiffs' costs.

19. I note the terms of the undertakings which the Defendant was willing to give and the late stage at which they were offered (16 May 2025 in respect of asset freezing and 21 May in respect of the proprietary injunction albeit in terms not acceptable to the Plaintiffs). As I stated in my judgment delivered on 3 June 2025, the belated undertaking in the Defendant's terms was not sufficient and the Plaintiffs were unwilling to accept it for good reasons. I held that the Plaintiffs had reasonable grounds for not accepting the undertaking offered by the Defendant and the position had to be dealt with by way of an Order.

20. As I recorded in the judgment I made an order substantially in the terms suggested by the Plaintiffs subject to the amendments I specified during my exchanges with counsel.

21. The Defendant was not however fighting the application "tooth and nail on every point". The Defendant eventually conceded a good arguable case/serious issue to be tried on the merits in respect of the allegations of fraudulent misrepresentations but picked a costly and time-consuming fight on real risk of dissipation and whether it was just and convenient to grant the asset freezing injunction. I note also that the Plaintiffs did not obtain an order in exactly the terms they requested. The Plaintiffs however obtained substantially what they sought.

22. The Defendant lost his fight in resisting the granting of an asset freezing injunction and he must pay the costs of the Plaintiffs who were successful, despite the Defendant's opposition, in obtaining

an asset freezing injunction. In the particular circumstances of this case I make an order that the Defendant pays the Plaintiffs' costs insofar as they relate to the application for the asset freezing injunction, such costs to be taxed on the standard basis in default of agreement.

No interim payment on account

23. I do not however think an interim payment on account is appropriate. There may be complex arguments on taxation as to what costs were referrable solely to the application for the asset freezing injunction and those which were referable solely to the application for the proprietary injunction. Moreover there is insufficient information before the court for it to make a properly informed interim payment on account order. Those are good reasons in this case as to why an interim payment should not be made. It will be for the taxing officer to deal with the details if the parties cannot agree the quantum.

Order

24. Counsel to file before 3pm on 19 June 2025 a draft order for my approval, reflecting the determinations contained in this judgment.

David Doyle

THE HON. JUSTICE DAVID DOYLE
JUDGE OF THE GRAND COURT