IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

Neutral Citation Number: [2025] CIGC (FSD) 45

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
Appearances:	Alain Choo-Choy KC, Jason Mbakwe and Denis Olarou of Carey Olsen on behalf of Target Global Growth Fund II, SCSP-RAIF and Antler Global Master Fund S.A.R.L. SICAV-RAIF Andrew Ayres KC, Nienke Lillington and Romane Duncan of Conyers Dill & Pearman LLP on behalf of Liu Xun
Heard:	23 May 2025
Date of decision:	23 May 2025
Draft judgment circulated:	29 May 2025
Judgment delivered:	3 June 2025

Reasons for determination of an application for a worldwide asset freezing injunction prohibiting the Defendant from disposing of his assets up to the value of US$35 million coupled with a proprietary injunction targeting specific assets – consideration of the position of the parties and the evidence – the relevant law – court not conducting a mini-trial at the interlocutory stage – court keeping a mind open to persuasion – good arguable case/serious issues to be tried – real risk of dissipation – the offer of an undertaking – whether just and convenient to grant the relief requested by way of order

JUDGMENT

Introduction

1. There was an extraordinary start to the hearing on Friday 23 May 2025. I entered courtroom 6 at 10am expecting to hear submissions in respect of an application for injunctions to be granted. Counsel requested a one-hour adjournment (sadly in itself not particularly extraordinary) as they were hopeful of agreeing an undertaking but apparently just needed some more time to finalise its terms. I was conscious that the parties had already had plenty of time but agreed to a short adjournment as in the long run valuable court time could have been saved if an undertaking was agreed. It was however, as stated at the time, with reluctance, that I adjourned for an hour and then a further 15 minutes and then another 15 minutes at the request of counsel. I returned to court at about 11.45am only to receive the extraordinary news that the Defendant's legal team had lost contact with him and they were unable to agree the terms of an undertaking. I have been provided with no explanation for that loss of contact but there may be an innocent explanation for it. As I indicated at the hearing, in such circumstances, I did not draw any adverse inferences against the Defendant from the events as they transpired between 10am to 11.45am on 23 May 2025.

2. In the absence of agreement on an undertaking I proceeded to hear legal argument and at about 5pm that day announced my decision to grant a worldwide freezing order coupled with a proprietary injunction targeting specific assets. I now give my reasons for arriving at such a decision.

3. In this case the Plaintiffs, Target Global Growth Fund II, SCSP-RAIF ("Target") and Antler Global Fund Master S.A.R.L. SICAV-RAIF ("Antler"), applied for an injunction prohibiting Liu Xun (the "Defendant") from disposing of his assets worldwide up to a value of US$35 million, coupled with a proprietary injunction targeting specific assets. As will become apparent in more detail below,

the Plaintiffs had already obtained injunctions in Singapore against the Defendant and they proceeded, on notice, against the Defendant in the Cayman Islands by way of summons dated 7 April 2025. The hearing of the Summons was listed for 23 May 2025 to suit the convenience of counsel engaged in the case. All parties were content that this court had jurisdiction to consider and determine the Summons.

4. I considered the hearing bundles and the skeleton arguments and authorities. I also heard oral submissions from Alain Choo-Choy KC accompanied by Jason Mbakwe and Denis Olarou of Carey Olsen for the Plaintiffs and Andrew Ayres KC accompanied by Nienke Lillington and Romane Duncan of Conyers Dill & Pearman LLP for the Defendant. I am grateful to counsel for their assistance to the court.

5. I should stress that at this stage the court was dealing with the application before it without the benefit of discovery having been completed and without there having been any cross-examination of witnesses. Whether this case simply concerns investments which went wrong, beyond the control of the Defendant, or whether it involves a fraud will be determined at trial. In fairness to the Defendant, all that is presently before the court are allegations and evidence untested by cross-examination. It is correct to add however that the evidence filed to date does not show the Defendant in a particularly good light but whether the Plaintiffs can prove the serious allegations they make against him will be for determination at the trial and not for determination at this early interlocutory stage when dealing with an application for injunctions to preserve the position pending determination of the Plaintiffs' claims at trial.

6. The granting of a worldwide asset freezing injunction is a very big step to take and the court must "scrutinise the basis for such an injunction with the utmost care" (Sundaresh Menon CJ in *Bouvier v Accent Delight International Ltd* [2015] SGCA 45 at [1]). In *Bouvier* the central question was whether it had sufficiently been shown that there was a real risk that the defendants would dissipate their assets to frustrate an anticipated judgment of the court and the Court of Appeal of Singapore felt that such requirement lay at the heart of the court's power to grant asset freezing injunctions. I respectfully agree. In the appeals in Singapore the court found that the respondent had failed to establish that risk and set aside the injunctions as well as the ancillary disclosure orders made against the appellants/defendants. In the case presently before me I concluded that the Plaintiffs had sufficiently shown a real risk of dissipation. Each case, of course, depends on its own facts and circumstances.

The position of the Plaintiffs

7. The Plaintiffs' case in a nutshell is that they invested substantial funds US$31,532,000 in total (US$25,000,000 by Target and US$6,532,000 by Antler – the "Funds") pursuant to a Subscription Agreement dated 20 September 2022 (the "Subscription Agreement") between Target, Antler, the Defendant, Artem Ibragimov ("Artem") and XanGroup Holdings Corp ("XanGroup") and that the Defendant has acted fraudulently in respect of that investment. The Plaintiffs say that their entry into the Subscription Agreement and the transfer of the Funds was induced by the Defendant's fraudulent misrepresentations as to the intended use of the Funds as part of XanGroup's capital and for the purposes of furthering XanGroup's business as a decentralized payment network operator. The Plaintiffs' case is that the Funds were in fact intended by the Defendant to be diverted to him for his personal benefit, rather than deployed as the capital of XanGroup for the purposes of XanGroup's business.

8. The Plaintiffs are venture capital entities incorporated in Luxembourg. The Defendant (who is 31 years old) gives an address in China but appears to have connections with Singapore and apparently has dual Dutch and Hong Kong citizenship and was for a time stuck in Vietnam with his passport confiscated by the Vietnamese authorities in the summer of 2023. He appears to have rights of employment and residence in Singapore. XanGroup is an exempted company under the laws of the Cayman Islands. XanGroup has two wholly owned subsidiaries: I of Providence Pte Ltd ("IoP") a company incorporated in Singapore and XanPool Limited ("XanPool") a company incorporated in the British Virgin Islands.

9. It appears that the Plaintiffs commenced substantive proceedings against both the Defendant and Artem before the courts in Singapore (HC/OC 853/2024) and obtained Singapore injunctions against both of them on 4 October 2024 (HC/OA 1023/2024). As a result of the Defendant's successful challenge against the jurisdiction of the Singapore court, in reliance upon a Cayman exclusive jurisdiction clause in the Subscription Agreement (clause 14.6) the substantive proceedings against the Defendant in HC/OC 853/2024 have been stayed, but following a contested hearing on 21 March 2025 the Singapore court granted a new worldwide freezing order (HC/OC 290/2025) in aid (and in anticipation) of Cayman substantive proceedings by the Plaintiffs against the Defendant (the "Singapore WFO").

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10. I carefully considered the Singapore WFO and the assets it covers. I noted also the undertakings given to the court by the Plaintiffs including an undertaking:

    (1) as soon as practicable and by no later than 7 April 2025 to commence proceedings in the Cayman Islands claiming appropriate relief against the Defendant;

    (2) as soon as practicable and by no later than 7 April 2025, to apply for a similar worldwide freezing injunction in the Cayman Islands against the Defendant; and

    (3) to write to inform the Singapore court immediately after the outcome of the application for the worldwide freezing injunction in the Cayman Islands against the Defendant is known and to have an urgent hearing fixed before the Singapore court.

11. Under the Singapore WFO the Defendant must inform the Plaintiffs in writing "at once of all his assets whether in or outside Singapore" and the information must be confirmed in an affidavit within a week after service of the Order. Under the Singapore WFO the Defendant is not prohibited from spending US$2,000 a week towards his ordinary living expenses and also a reasonable sum on legal advice and representation.

12. The Plaintiffs submitted that:

    (1) they had a good arguable case;
    (2) there was a real risk of dissipation; and
    (3) it was just and convenient to grant the injunction.

13. The Plaintiffs added that the requirements for a proprietary tracing injunction were also met.

<u>The position of the Defendant</u>

14. The position of the Defendant was basically that there was no fraud here. He said in effect that the Plaintiffs took a commercial risk in making an investment and now seek to blame him as the investment has not been successful. The trouble arose, according to the Defendant, because of the collapse of the Silicon Valley Bank on 10 March 2023 which he says caused panic within the cryptocurrency world and within XanGroup. The Defendant referred to this as the "March 2023 Incident". The Defendant in his evidence said that the Plaintiffs had not established that there was

a good, arguable case of fraud against him and denied making any fraudulent misrepresentations to the Plaintiffs. At paragraph 131 of his affirmation, affirmed on 14 May 2025, the Defendant said:

> "The reality, however, is that XanGroup has simply failed due to factors that were not within XanGroup's (or my) control (i.e. the March 2023 Incident), and that this was an unsuccessful investment by the Plaintiffs."

15. The Defendant, at paragraph 32 of his affirmation, sought *prima facie* somewhat remarkably to explain away the reason that the Funds in XanGroup's bank accounts were transferred to an account in his personal name at Bitfinex rather than to an account in the name of XanGroup, as follows:

> "… for XanGroup to comply with the KYC requirements of cryptocurrency exchanges such as Bitfinex, I would have had to approach every single investor in XanGroup to request them to provide the particulars of their largest limited partners. Given the sensitivity of the matter and for privacy reasons, this was not practical as it was unlikely that the investors would be willing to provide such information. As such, opening the account in my own name on XanGroup's behalf was the only viable KYC-compliant solution."

What the Defendant does not add is that it was not his money, and he did not tell Bitfinex that it was not his money.

16. The way in which the Defendant dealt with serious allegations regarding a Share Repurchase Agreement dated 15 August 2022 (the "False SRA") signed by him and Artem was also *prima facie* quite remarkable. I should add that Mr Ayres in his oral submissions did not shy away from referring to the Share Repurchase Agreement as a false document. The Defendant does not deny that it was a false document. I keep a mind open to persuasion, but on its face the False SRA is a concern. I take care to analyse its relevance to the present issues before the court. Mikhail Lobanov of Target in his first affirmation affirmed in Spain on 7 April 2025, at paragraph 55 onwards, refers to the False SRA which was submitted to Bitfinex apparently as part of Know Your Customer ("KYC") checks and processes for the Bitfinex accounts held by the Defendant. In the recitals to the False SRA there is reference to the Defendant holding shares in XanGroup and the desire of XanGroup to repurchase the shares for a repurchase price of US$35,200,000. The document is

signed by the Defendant and Artem on behalf of XanGroup. The Plaintiffs say that "The False SRA was clearly prepared in furtherance of the fraudulent scheme". Mr Lobanov at paragraph 59 says:

> "I believe that the False SRA had been prepared in order to pass Bitfinex's KYC checks and to prove a source of funds for and/or disguise the receipt of US$35,200,000 in the Bitfinex accounts held by Jeff [the Defendant]".

17. What did the Defendant have to say about these serious allegations? First of all there was no clear express denial in respect of the Plaintiffs' allegation that the False SRA was false. He did not say that it was a genuine document. He simply said at paragraph 119 of his affirmation that it "was not a document that was meant to defraud or mislead the Plaintiffs. It was a document submitted to Bitfinex for the purposes of their KYC requests." On the face of it that was quite a remarkable explanation in respect of the creation of a document signed by the Defendant which the Plaintiffs allege was a false document. It appeared that the Defendant was content to be a party to a document which had the potential to mislead Bitfinex, to put it most neutrally. On the face of it, it is a matter of serious concern when a false document is used for KYC purposes. The Defendant was apparently comfortable to do so because of "sensitivity" and "privacy" issues and referred to such in an affirmation, without any real recognition of the seriousness of the position.

18. Mr Choo-Choy, in his attractive and well-measured yet forceful oral submissions, referred the court to the declarations the Defendant had given to Bitfinex. The first one is dated 18 April 2019 and the name of the applicant is the Defendant and the applicant's signature appears. It does not appear to be disputed that in that document the Defendant declares that "my account is being opened for my exclusive use, and will not be utilized for the benefit of a third party." The Defendant adds "I do hereby solemnly declare that the information provided is up to date and correct". In the introductory words before the declaration Bitfinex refer to the requirements of anti-money laundering, counter terrorist financing and sanctions legislation and the requirement to establish and record evidence of the identity and source of funds for their clients before establishing a business relationship and state:

> "In addition, we are also required to determine that the account is not being opened and will not be operated for the benefit of a third party."

On the Defendant's case his personal account at Bitfinex was being opened on behalf of XanGroup. On the face of it his solemn declaration was false. It appears that the Defendant was seeking to drive a coach and horses through Bitfinex's KYC requirements.

19. There are other similar documents signed by the Defendant and dated "2020-08-03" and "Mon Sept 27 2021".

20. On the Defendant's own case the statements he provided to Bitfinex were contrary to the true position. He was *prima facie* falsely representing the true factual position to Bitfinex to avoid what, on his case, he regarded as the inconvenience of complying with important KYC requirements. Anyone of integrity legitimately working in the financial services sector should have been in no doubt as to the importance to properly comply with such internationally well recognised requirements. Creating or at least being a signatory to a knowingly false document and making false declarations to satisfy KYC requirements is *prima facie* improper conduct, and although I take care not to throw this point out of all reasonable proportion, this type of improper conduct is of real concern to the court. It may not automatically satisfy the requirement of "solid" evidence of dissipation but it is certainly one factor to bear in mind when considering whether there is a real risk of dissipation in this case.

21. In his skeleton argument, at paragraph 64, Mr Ayres for the Defendant said that the False SRA "was prepared exclusively to satisfy Bitfinex's KYC so that Mr Liu [the Defendant] could continue to operate the account and was not meant to defraud or mislead the Plaintiffs. There was never any misrepresentation to the Plaintiffs as to the Defendant's shareholding in XanGroup…. The allegation by the Plaintiffs that the agreement is a "false" document must be seen in context and does not justify the entirely overblown suggestion of Mr Liu's [the Defendant's] wholesale dishonesty. What is required is actual evidence of clear dishonesty which is directed towards the Plaintiffs and can justify a rational conclusion that the Defendant will hide assets and seek to make himself judgment proof."

22. The latest report dated 20 March 2025 from Match Systems Solutions Pte Ltd ("Match Systems") referred to the Funds which they say were "siphoned" by the Defendant "by converting them from USD to cryptocurrencies via a corporate account at DBS Bank owned by IOP and B2C2 cryptocurrency service" and the "converted funds were subsequently transferred to personal non-exchange wallets related to [the Defendant]" via XanPool and to "Bitfinex individual [Defendant's]

account." The Defendant said that he has no reason to deny the transfers of funds highlighted in the Plaintiffs' evidence. He said that they were legitimate transfers for the purposes of XanGroup's business. He said they were payments of XanGroup's considerable expenses. Other than what the Defendant says and produces there is, at this stage, very little independent evidence to corroborate his evidence on expenses.

23. The Defendant said that the Funds have not been misapplied and there is no risk of dissipation of assets. He added that the Plaintiffs undertook a due diligence exercise into the business of XanGroup. The Defendant did not say whether the data room contained the False SRA or the apparently false declarations of the Defendant to Bitfinex. The Defendant said that the Plaintiffs were fully aware of XanGroup's business and operations and would have been well-placed to evaluate the business opportunity that was presented to them. Mr Ayres outlined the set up and history of XanGroup and I took that into account.

24. The Defendant said it was inaccurate for the Plaintiffs to allege that they entered into the Subscription Agreement on the basis that they relied on and were induced by representations made by the Defendant. The Defendant in effect denied that he disappeared for a time or was running away but did refer to his detention in Vietnam in the summer of 2023. The Defendant said that subsequent to the March 2023 Incident he "had taken it upon myself to do everything that I could to rescue XanGroup." This did not appear, on the face of the evidence, to have included close contact with and regular communications to the Plaintiffs.

25. At paragraph 114 the Defendant said that he attempted to carry out more trading activities in order to generate more revenue for XanGroup. He said that in early April 2023 he opened a high-margin trading account with OPNX, a cryptocurrency exchange. The Defendant said that the "account was opened in my personal name" and was "for the purposes of carrying out trading activities with the investors' funds in the form of market-making…". The Defendant at paragraph 115 admitted that he "used approximately 6.2 million USDC (which was part of XanGroup's treasury) to place a short position on Ethereum. However, due to the adverse market conditions at the time, the trade did not perform well, resulting in a net loss of US$34.6 million … I panicked and thereafter removed myself from active communications with the investors as I tried to rectify the situation." At paragraph 117 the Defendants stated:

> "At no point in time was I doing any of this for my own personal benefit and I have not misappropriated the Invested Funds."

26. The Defendant said that the redemption of the Housing Loan on the Jalan Rajah Property (which he said is his marital home shared with his wife although in his name personally) was "from savings of our salaries". No salary statements or bank statements in support were referred to or exhibited to support that statement.

27. The Defendant referred to various assets over which the Plaintiffs were seeking a worldwide freezing order and said that some of these accounts had been closed or only have little money in them and others do not belong to him.

28. Somewhat optimistically Mr Ayres submitted that "in a single round of evidence the Defendant has successfully defeated the suggestion that he is plainly dishonest and that such dishonesty/conduct both infects the whole commercial relationship between the Plaintiffs and XanGroup and is conduct which demonstrably shows that there is a real risk that Mr Liu [the Defendant] is the sort of man who will make himself judgment proof. The fact that Mr Liu [the Defendant] has offered an Undertaking to the court for the whole amount sought is clear additional evidence of the absence of any risk of dissipation" (paragraph 76.2 of his skeleton argument).

29. The Defendant denied the allegations of fraud against him and referred to his explanations in respect of the allegations made against him. The Defendant denied that "he has been a crook from the start" and said that he proposed to meet the false claim against him firmly, clearly and successfully at trial.

30. The Defendant said that he had (subject to appropriate protections being afforded to him including perhaps fortification of the cross-undertaking and security for costs) recently (on 16 May 2025) offered to the Plaintiffs an undertaking which would provide sufficient and specifically tailored protection to them (the "Undertaking"). He stressed that the Undertaking included the following features:

(1) an undertaking not to dispose or diminish assets below a level of US$35,000,000;

(2) "asset-specific prohibitions referable to the evidence about assets which Mr Liu [the Defendant] controls";

(3) an undertaking with respect to asset disclosure; and

(4) a US$7,500 weekly limit for living expenses which is said to be "reflective of the experience of having a family and household in China while frequently travelling to Australia for work and occasionally to Singapore to visit his parents-in-law."

31. By email to the Court dated 22 May 2025 at 1:25pm the Defendant attached a draft order with a further, amended, undertaking.

32. By email dated 23 May 2025 at 7:27am the Plaintiffs attached a draft consent order (which included an undertaking from the Defendant) which they had proposed to the Defendant for agreement. As events transpired on the morning of the hearing, these amendments were not agreed by the Defendant.

33. The Defendant's case is that he did not make any representations to the Plaintiffs as alleged but that (in any event) the representations would have been true if made. The Defendant said that the Funds had been used in the course of XanGroup's business and the Defendant did not siphon off the Funds for his own use (or otherwise). The Defendant said that the Funds have been lost due to the failure of the business, a risk which the Plaintiffs took and there has been no fraud, still less a fraud perpetrated right from the start.

34. The Defendant said that many of the "assets" proposed to be the subject of the freezing order are either not controlled by him or have been closed down.

35. Sensibly, with respect to the test of good arguable case/serious issue to be tried, the Defendant did not at the hearing challenge that test in relation to the claim for damages for fraudulent misrepresentation. He in effect admitted, for the purposes of the interlocutory hearing, that there was a good arguable case/serious issue to be tried in respect of the claim based on fraudulent misrepresentation. In light of the evidence presently before the court it is difficult to see how he could have reasonably done otherwise.

36. The Defendant's main points of dispute were as follows:

(1) it was abusive for the Plaintiffs to come to this court asking for discretionary relief and requiring clean hands not to have paid the costs orders made against them by the Singapore courts;

(2) there was no solid evidence of a real risk of dissipation. It was added that the fact that the Defendant had offered the Undertaking "for the whole amount sought is clear additional evidence of the absence of any risk of dissipation";

(3) the initial advance of funds was in September 2022. The business failed from March 2023 onwards. It was only in October 2024 that the Plaintiffs sought remedies in the Singapore Courts. The Defendant maintained "this is far too late";

(4) with respect to "just and convenient" the claim is weak and the interference is not justified; and

(5) the proprietary remedies are likely to be hopeless.

<u>Relevant law</u>

37. In respect of the relevant law, amongst the other authorities referred to in the lengthy skeleton arguments, I considered the relatively recent judgments of members of the Court of Appeal of England and Wales in *Dos Santos v Unitel SA* [2024] EWCA Civ 1109, delivered 30 September 2024.

38. The Chancellor, Sir Julian Flaux at paragraph 6 referred to the judge setting out the legal principles. An applicant for a freezing order had to show:

(1) a good arguable case on the merits;

(2) a real risk, judged objectively, that a future judgment would not be met because of an unjustified dissipation of assets; and

(3) that it would be just and convenient in all the circumstances to grant the freezing order.

39. At paragraph 6 there is reference to "good arguable case" being explained by Mustill J in *Ninemia Maritime Corp (The Niedersachsen)* [1984] 1 All ER 398 as "one which is more than barely capable of serious argument, but not necessarily one which the judge considers would have a better than 50 per cent chance of success." In effect is there a "serious issue to be tried"? (see paragraph 131 of Popplewell LJ's judgment in *Dos Santos*).

40. At paragraph 96 of *Dos Santos* Sir Julian Flaux stated "the correct test as to what constitutes a good arguable case for the purposes of the merits threshold for the grant of a freezing injunction is that formulated by Mustill J in *The Niedersachsen* …"

41. Popplewell LJ at paragraph 131 stated:

> "… there is not, and should not be, any distinction to be drawn between the 'good arguable case' test for freezing orders and the test of 'serious issue to be tried' for other forms of interim injunctions. That being so, it would be preferable to use the latter in the context of freezing orders and to restrict the use of the expression 'good arguable case' to the context of jurisdictional gateways, where it bears a different meaning in accordance with the principles explained in *Brownlie*. It is obviously unsatisfactory for an expression used to define a merits test to mean something different in one context (freezing orders) from that in another (jurisdictional gateways); that is likely to give rise to confusion and misunderstanding, as is well illustrated by the cases to which the Chancellor has referred."

42. Mr Ayres, in his robust and well-presented submissions, was keen to highlight to the court the comments of Popplewell LJ at paragraph 130 to the effect that it is always necessary to give anxious scrutiny not only to the second limb of the test, real risk of dissipation, but also to the third, whether it is just and convenient to make the order. Popplewell LJ stated:

> "It is by reference to the just and convenient criterion that the apparent strength of the claim may fall again for consideration …"

43. Lady Justice Falk agreed with both judgments.

44. In *Canterbury Securities Ltd (in official liquidation)* (FSD 133 of 2024 (IKJ), unreported judgment, 4 June 2024, prior to the judgments in *Dos Santos*) Kawaley J referred to the governing principles

in respect of asset freezing injunctions most clearly summarised by Ramsay-Hale CJ in *Ovaskainen v Ovaskeinen* (FSD 138 of 2023 (MRHCJ), unreported judgment, 21 June 2023) and at paragraph 7 Kawaley J concisely summarised what applicants need to establish:

> "(a) a good arguable case on the merits of their claims;
>
> (b) that the Respondents likely had assets against which a judgment could be enforced; and
>
> (c) cogent evidence of a real risk of dissipation unless the Respondents were restrained."

45. Segal J in *Productivity Media Inv v Santor* (FSD 360 of 2024 (NSJ), unreported judgment, 18 December 2024) followed the approach in *Dos Santos* (see [28]-[31]). See also the judgment of Ramsay-Hale CJ in *Lakeshore Biopharma Co Ltd* [2025] CIGC (FSD) 24 at [39]. These principles are well established in many common law jurisdictions worldwide.

46. In *Raad v Sturgeon* 2003-05 MLR Note 11, as a young Second Deemster in the Isle of Man, I highlighted some of the factors to take into account when considering risk of dissipation as including:

(1) the nature of the assets to be frozen and the ease with which they could be dissipated;

(2) the nature or financial standing of the defendant's business, his place of residence and his credit record;

(3) the length of time the defendant has been in business noting that stronger evidence of potential dissipation will be needed if the defendant is well established with a reasonable reputation;

(4) if the defendant is a foreign company whether any eventual judgment can be enforced in the country in which it is registered or has its main business address;

(5) any intention expressed by the defendant about future dealings with his assets;

(6) any connections between the defendant and any parties who have defaulted on judgments, particularly companies within the same group; and

(7) the defendant's behaviour in response to the plaintiff's claims. Evasiveness, delaying tactics, unwillingness to participate in the litigation, failure to disclose assets, or taking steps to transfer them, may all be factors that assist the plaintiff. The court should, however, consider any information that may explain the defendant's conduct.

47. In his off cited publication, Gee on *Commercial Injunctions* (Seventh Edition) from 12-041 onwards provides some useful guidance in respect of the need for solid evidence of risk of dissipation. The burden is on the Plaintiffs to satisfy the threshold that there is a real current risk that any judgment they obtain will go unsatisfied because of unjustified dissipation of assets. The court looks at the totality of the evidence and relevant factors may be looked at cumulatively. The court may look at the nature of the assets and the ease or difficulty with which they could be disposed of or dissipated. A pattern of evasiveness may also be relevant. An offer of an undertaking may, depending on the circumstances, indicate an absence of risk. Good grounds for alleging that a defendant has been dishonest may be relevant. In cases involving a fraud or involving dishonesty or unconscionable conduct, conduct relevant to the underlying claim on the merits (where the allegations are disputed by the defendant but there is a good arguable case in support of it) may also be relevant. Where a defendant has acted with an unacceptably low standard of commercial morality which gives rise to a feeling of uneasiness about the defendant this may also be taken into account. But the dishonesty or other misconduct must be relevant to the risk of dissipation. Not every act of dishonesty is relevant to this. The fact that a defendant is experienced in intricate, sophisticated, international transactions involving movement of large sums of money may also indicate that there is a real risk of dissipation.

48. In an appeal dealt with by 7 members of the Judicial Committee of the Privy Council (*Broad Idea International Ltd v Convoy Collateral Ltd* [2021] UKPC 24) Lord Leggatt (with whom Lord Briggs, Lord Sales and Lord Hamblen agreed) referred to the developments in respect of freezing injunctions and from paragraph 18 onwards referred to the jurisdiction to grant worldwide freezing injunctions. At paragraph 60 Lord Leggatt referred to "[t]he ease and speed with which money and other financial assets can be moved around the world … Today the international transfer of funds is easy and almost instantaneous …". At paragraph 89 Lord Leggatt stated "[t]he purpose of the injunction is to prevent the right of enforcement from being rendered ineffective by the dissipation of assets against which the judgment could otherwise be enforced." At paragraph 101(iii) Lord Leggatt referred to the need for there to be "a real risk that, unless the injunction is granted, the

respondent will deal with such assets (or take steps which make them less valuable) other than in the ordinary course of business with the result that the availability or value of the assets is impaired and the judgment is left unsatisfied." Sir Geoffrey Vos (with whom Lord Reed and Lord Hodge agreed) did not disagree on the outcome of the appeal but did disagree on whether it was appropriate "to decide the legal question arising under the power issue" ([219]) namely whether under the laws of the British Virgin Islands the court has power at common law to grant a freezing injunction against a defendant in aid of foreign proceedings, when no substantive claim is made against that defendant in proceedings before the domestic court.

49. Sundaresh Menon CJ in *Bouvier* at [59] cautioned against wading into the merits of a case which was "very much at an interlocutory stage" and added at [62] that "at the interlocutory stage, the court must tread cautiously. It must not treat allegations of dishonesty as established."

50. At [65] the Chief Justice of Singapore added:

> "An allegation of dishonesty cannot obviate the need to establish a real risk of dissipation … Moreover, dishonest conduct can come in different shades and hues."

51. The Chief Justice also emphasised the need to "distinguish between different types of dishonest conduct, some of which might more readily support an inference of a real risk of dissipation than others …".

52. At [66] the Chief Justice of Singapore made the obvious but important points that "it is incorrect for the court to treat allegations of dishonesty made at an interlocutory stage as if they have already been established. Such allegations may eventually be rejected. As a matter of principle therefore, the grant of Mareva relief should not generally be *wholly* founded upon an unproven allegation of dishonesty. This does not mean that the evidence provided in support of an allegation of dishonesty is irrelevant. But, the objection from principle dictates that the existence of a real risk of dissipation must be assessed *independently* from the prospect of the plaintiff's eventual success (or failure) in establishing an allegation of dishonesty …".

53. I also considered the relevant law in respect of proprietary injunctions, as outlined by counsel in their written and oral submissions.

54. Where a plaintiff seeks to trace a beneficial interest in assets it is well established that the court can grant a proprietary injunction for the purpose of preserving the assets so that they can be made over to the claimant as his property if the claim succeeds.

55. I noted the provisions of Order 28 r.2 (1) and 2 (3) of the Grand Court Rules and the helpful judgment of Ramsay-Hale CJ in *Lakeshore Biopharma Co Ltd* [2025] CIGC (FSD) 24 at [29] which deals with the court's power to make property preservation orders and to grant proprietary injunctions. The Chief Justice at [31] stated that in making an order of this kind the principles of *American Cyanamid* apply.

56. I noted also Parker J's judgment in *Ascentra Holdings, Inc (in official liquidation) v Ryunosuke Yoshida and others* (FSD 300 of 2023 (RPJ), unreported judgment, 23 May 2024) in respect of interlocutory proprietary injunctions. There must be a serious issue to be tried and the balance of convenience must come down in favour of granting the proprietary injunctive relief and it must be just and convenient to grant such relief. Parker J at [98] stated:

> "… it follows from the nature of a proprietary injunction that the serious issue to be tried should be in respect of facts which, if proven, would afford the claimant a proprietary remedy."

<u>Determination</u>

Not a mini-trial and keeping a mind open to persuasion

57. The hearing of the application for the injunctions and disclosure orders was not a mini-trial. I reminded myself that discovery had not yet taken place and witnesses had not yet been cross-examined. I keep a mind that is open to persuasion. Sometimes the picture painted at a substantive hearing is different to the picture that appears to a court at an early interlocutory stage.

Good arguable case/serious issues to be tried

58. In relation to the application for a worldwide freezing injunction up to a value of US$35 million I was satisfied that there was a good arguable case/serious issues to be tried. Indeed insofar as the allegations of fraudulent misrepresentations were concerned, the Defendant, for present purposes, conceded the same.

Real risk of dissipation

59. I was also satisfied that there was a real risk, judged objectively, that a future judgment would not be met because of an unjustifiable dissipation of assets. In respect of whether there is a real risk this is defined as "something which is more than fanciful". I accept, as indeed I think Mr Ayres did, that there is no requirement to show that there is a high probability of dissipation or even that dissipation is more likely than not.

Allegations of fraud and dishonesty

60. In this case the Plaintiffs placed some reliance on their allegations of fraud and dishonesty against the Defendant and I carefully considered the nature of the alleged fraud and dishonesty in this case. The court must consider the facts and circumstances of each individual case and ask whether the fraud and dishonesty alleged justifies the inference that there is a real risk that assets may be dissipated. I accept that it cannot be said that merely because a fraud claim is brought, even when such allegations reach the standard of good arguable case/serious issue to be tried, that a real risk of dissipation will automatically have been satisfied. The court must scrutinise the case carefully. As Sundaresh Menon CJ in *Bouvier* at [94] so wisely put it:

> "… in each case, it is incumbent on the court to examine the precise nature of the dishonesty that is alleged and the strength of the evidence relied on in support of the allegation, keeping fully in mind that the proceedings are only at an interlocutory stage and assessing, in that light, whether there is sufficient basis to find a real risk of dissipation … An allegation of dishonesty does not in itself form a substitute for an examination of the degree of risk of dissipation unless, as we have said, that allegation is of a nature or characteristic that sufficiently bears upon the risk of dissipation …"

61. I noted the requirement of "solid evidence" as to risk of dissipation. I noted all the evidence in this case and I inferred a risk of dissipation from all the surrounding circumstances. I appreciated that to justify this inference the dishonesty needed to be relevant to the risk of dissipation (*Thane Investments Ltd v Tomlinson* [2003] EWCA Civ 1272 at [26] to [28]). It is a rare case where there is direct evidence of a risk of dissipation. I agree that usually the risk of dissipation is intrinsically linked to the nature of the claim.

The Defendant's sophistication and ease of transferring monies

62. I noted the sophistication of the Defendant's operations and his Dutch, Hong Kong/Chinese, Singapore, BVI and Cayman connections and his apparent ability to act quickly in the crypto currency world. The Plaintiffs refer to the evidence provided by Match Systems of various transactions involving cold and/or hot wallets which belonged or are likely to belong to the Defendant. They add that the cryptocurrency assets in the Bitfinex accounts and the traced wallets are susceptible to being transferred by the click of a button. They add that digital wallets can be completely anonymous and untraceable to the owner and can be easily dissipated and hidden in cyberspace. I note the ease and speed in which the Defendant could transfer assets.

63. None of these factors alone are, of course, determinative of the risk of dissipation issue but they are factors to take into account. The Defendant has shown that he is well able to easily move other people's monies around.

The False SRA

64. The evidence reveals on its face that the Defendant cannot always be trusted or relied upon to act in an open, honest and legal manner. The False SRA is one prime example. The Defendant *prima facie* appears to be content to be the author of a false document although in his Defence he says it was not intended to deceive or mislead the Plaintiffs. It was intended for Bitfinex only. To say in effect I did not intend to mislead the Plaintiffs but I did intend to mislead Bitfinex is not an attractive place to inhabit. The Defendant also appears to have signed false declarations. It appears that the Defendant is content to engage in *prima facie* improper conduct, such as being a party to false documentation for KYC purposes, if it suits his own personal purposes or because it makes life more convenient for him. It was also of relevance to note that it was the Plaintiffs, with the assistance of Match Systems, that discovered the Bitfinex account and subsequent wallets. Its existence was not disclosed to the Plaintiffs by the Defendant. It appears that the Defendant was far from open with the Plaintiffs in respect of the account in the Defendant's name and how he opened it with Bitfinex. The Defendant says in effect it was because he did not wish to inconvenience the Plaintiffs and others. The Plaintiffs say in effect that something more sinister was afoot and the Defendant was engaged in wrongful conduct furthering a fraudulent scheme to the detriment of the Plaintiffs. I was not in a position to determine whose version was correct at this interlocutory stage.

65. I did not wish to throw these points out of all reasonable proportion but they were points, along with many others, that I needed to take into account when considering if there was solid evidence of a real risk of dissipation. I accepted that they were not determinative. Just because the Defendant had been involved with the creation of a false document and had given false declarations for KYC purposes did not automatically mean that there was a real risk of dissipation.

66. The substantive trial will be determined on the basis of the evidence and arguments presented to the court at that advanced stage. However, at the very least, on the evidence presently before the court, the attitude adopted by the Defendant in this case to the need for documents to be accurate, to act honestly in respect of KYC requirements and to safeguard other people's money appeared, on occasions, to be somewhat cavalier.

67. I appreciate that some may argue that judges and lawyers live in a different world to the world inhabited by some people of business. Let me be clear. In the Grand Court, the rule of law, the truth, honesty and integrity still matter and they should also still matter in the world of business and investment. Parties should not be surprised if, even at the interlocutory stage, a judge's eyebrows are raised or if frowns appear on a judge's face when parties are involved with apparently false documentation.

The Ethereum "investment"

68. The placing of significant funds with Ethereum and the subsequent heavy loss *prima facie* also shows the Defendant in a poor light. It may be he simply panicked or it may be something more sinister. The determination of that issue will have to await trial. The admitted actions of the Defendant do however raise issues as to the way in which he is willing to deal with money that does not belong to him.

69. This factor is not determinative but is a factor to weigh in the balance when considering the important real risk of dissipation issue.

The Defendant's "disappearance"

70. The Plaintiffs produced evidence of the apparent temporary "disappearance" of the Defendant which raised legitimate concerns. I noted the Defendant's evidence in response but it did appear that the Defendant did not keep in contact with the Plaintiffs, who were major investors. The Defendant tried to explain away some of this apparent evasiveness by saying that, for part of the time, he was detained in Vietnam. The evidence is to the effect that his passport had been taken away by the police in Vietnam. There is no evidence that his mobile devices were confiscated or that he was detained in a cell with no contact with the outside world. There is no evidence that he did not have access to electronic devices. It appears that, if he had wanted to, he could have contacted the Plaintiffs. I also appreciate that "disappearances" do not always equate to improper conduct or real risk of dissipation.

71. The Defendant's Singapore solicitors did contact the Plaintiffs on 7 November 2024, after the original Singapore injunctions were served on him. I noted the Defendant's attempts to justify his lack of contact with the Plaintiffs. There remained however a concern in respect of the Defendant's lack of regular contact with the Plaintiffs. The Defendant said that all investors were privy to his personal email address and were aware that he could be contacted at that address.

The alleged breaches of court orders

72. This brings me on to the next concern. The Plaintiffs alleged that the Defendant had breached the Singapore injunctions which were initially granted on 9 October 2024. They said that the Defendant was put on notice of the prohibition relating to the dissipation of his assets on 9 October 2024 by an email to the personal email address the Defendant himself said should be used if investors wished to reach out to him. The Singapore injunctions were also delivered via registered mail to his address in Singapore on 15 October 2024. The Plaintiffs said that the Defendant says that he first had sight of the injunctions on 31 October 2024, when he returned to Singapore. Mr Ayres submitted in effect that the evidence did not establish any knowing breaches of court orders. I was not in a position to determine this issue at the interlocutory stage.

73. I did however note that the Singapore court on the evidence presented to it must have concluded that there was a real risk of dissipation otherwise it would not have granted the Singapore WFO.

Summary of real risk of dissipation

74. I noted all the powerful points that Mr Choo-Choy made on behalf of the Plaintiffs in respect of a real risk of dissipation. I noted all the eloquent points made by Mr Ayres on behalf of the Defendant in an attempt to comfort the court that there was no real risk of dissipation. I was not satisfied that the Undertaking was indicative of absence of risk in the circumstances of this case. The burden was on the Plaintiffs to establish a real risk of dissipation. At the end of the hearing I concluded that the Plaintiffs had satisfied this court that there was a real risk of dissipation. This interlocutory finding was not based on generalised assertions. I considered all the evidence including the reference to the False SRA and the false declarations for KYC purposes. I considered the Ethereum "investment" and the ease with which the Defendant could transfer monies and his temporary "disappearance" and lack of contact with the Plaintiffs. I also considered the very nature of the alleged fraud in this case and the various other factors of relevance which I have referred to in this judgment. It appeared to me that the Plaintiffs had jumped the real risk of dissipation hurdle.

The Undertaking

75. The belated undertaking in the Defendant's terms was not sufficient, and it did not allay this court's serious concerns in respect of the risk of dissipation.

76. The Plaintiffs were unwilling to accept the Defendant's Undertaking for numerous reasons including:

(1) it did not contain a penal notice;

(2) it did not expressly preserve the position under the Singapore WFO and acceptance could provide the Defendant with an argument that the Plaintiffs had breached their undertaking to the Singapore Court or otherwise provide grounds for a variation or discharge of the Singapore WFO;

(3) the Defendant was requesting too long in respect of the time periods for disclosure of information in respect of assets and a confirmatory affidavit;

(4) it did not properly deal with the proprietary injunction including the position in respect of crediting and the need for that to be subject to written agreement of the parties or in event of disagreement determined by the court;

(5) it did not deal with the need for evidence to justify the weekly amount of US$7,500 per week for ordinary living expenses.

77. Points (1) and (2) did not to my mind present real problems and, frankly, I found them unpersuasive. I was however with the Plaintiffs in respect of points (3), (4) and (5).

78. On (3), the Defendant was asking for 21 days to provide the information and 42 days to provide a confirmatory affidavit. That was far too long. In respect of the disclosure requirements I noted the provisions in the Singapore WFO. The Plaintiffs in these proceedings before the Grand Court of the Cayman Islands initially sought disclosure of assets "at once" and an affidavit within 7 days but the email dated 23 May 2025 at 7:27am and attachment referred to 14 days for the information and 28 days for a confirmatory affidavit. The potential need to provide information within a short time scale should not have come as a surprise to the Defendant, and the information needed to be provided much sooner than the Defendant suggested. I could well see how the Defendant's suggested extended time periods to comply with the disclosure requirements were unacceptable to the Plaintiffs.

79. On (4), the values must be agreed or in default of agreement determined by the court, otherwise, there is a risk that the Defendant could abuse the position.

80. On (5), the Defendant had produced no evidence to justify the US$7,500 per week for living expenses and plainly evidence is required in that respect.

81. In my judgment the Plaintiffs had reasonable grounds for not accepting the Undertaking offered by the Defendant. In my judgment the position had to be dealt with by way of an Order.

Delay

82. Mr Ayres complained about the delay in the Plaintiffs applying for invasive injunctive relief. Mr Choo-Choy outlined the action that the Plaintiffs had taken to discover the apparent wrongdoing and to obtain the necessary evidence before they commenced proceedings in Singapore and then

subsequently in Cayman. The delay complaint raised by the Defendant did not persuade me that I should not grant the injunctive relief. The delay had been adequately explained by the Plaintiffs.

The Singapore costs orders

83. Mr Ayres, in his skeleton argument, also complained that it was abusive for the Plaintiffs to come to this court asking for discretionary relief when they had not paid the Singapore costs orders. I was not persuaded that this point was fatal to the relief sought by the Plaintiffs. The costs seem to be the subject of continuing correspondence and Mr Ayres rightly did not press the costs point in his oral submissions.

Just and convenient

84. Mr Ayres placed emphasis on [130] of Popplewell LJ's judgment in *Dos Santos* and said that it is by reference to the just and convenient criterion that the apparent strength of the claim may fall again for consideration. I considered the just and convenient limb separately as I was required to do. I have to say that I did not consider the Plaintiffs' claims to be very weak or only just passing the threshold of good arguable case/serious issues to be tried. Nothing that had been written or said by or on behalf of the Defendant led me to conclude that it would not be just and convenient to grant the relief claimed by the Plaintiffs. The Plaintiffs persuaded me that it was just and convenient to grant the relief they claimed (with the amendments I specified during my exchanges with counsel).

85. I was unimpressed with the Defendant's claims that some of the assets are not his or that accounts have minimal balances or may have been closed. I concluded that the best way forward in this case, based on the evidence presently before the court, was to grant the order in terms requested by the Plaintiffs (subject to the amendments I specified) and if an innocent third party was affected, that third party could make representations to the Plaintiffs and an application can be made to vary the terms of the order. There was sufficient evidence before the court in the form of the Match Systems reports as to the ownership and control of the assets and the *prima facie* improper use of the Plaintiffs' monies by the Defendant.

86. In my judgment it was just and convenient in all the circumstances to grant the worldwide freezing injunction up to a maximum of US$35 million.

The proprietary injunction

87. In respect of the application for the proprietary injunction the Defendant accepted that rescission could be the foundation of an equitable proprietary claim but referred to paragraph 48 of the Statement of Claim and said that the Plaintiffs only sought to rescind by notice dated 7 April 2025 and even then only in respect of the Subscription Agreement. The Defendant said that the revesting of a beneficial title to the investment monies cannot defeat any better legal title to the monies (or the assets they represent) acquired between 2022 and 7 April 2025. The Defendant added that the Plaintiffs thus need to establish, to a clear evidential standard at this interlocutory stage, that specific traceable proceeds of their investment funds are in the hands of the Defendant.

88. Mr Choo-Choy said that it was a counsel of prudence to take such measures as were calculated to preserve the *status quo* and the grant of the proprietary injunction was the measure that would best accomplish this.

89. On rescission Mr Ayres also complained by way of oral submissions that the actual notice of rescission was not in evidence. Mr Choo-Choy said this was an oversight and undertook to file an affidavit or affirmation exhibiting it within 7 days. In any event, there was reference to it in the pleadings and its actual existence did not seem to be in serious dispute. The effect of the notice was however in dispute between the parties.

90. Mr Ayres at paragraph 84 of his skeleton argument said that any proprietary remedies could only arguably emerge from 7 April 2025 (on the basis that the notice of rescission is taken to be valid) and this is 2.5 years after the advance of the investment. Mr Ayres added that even if the Plaintiffs could establish that the "assets" are property of the Plaintiffs, the prospect of the Plaintiffs retaining a beneficial interest in the monies or their traceable proceeds was very slim. Mr Ayres said that the final nail in the coffin of the Plaintiffs' proprietary claim was the fact that the Plaintiffs did not expressly seek to rescind the Shareholders' Agreement. Mr Choo-Choy said it was sufficient that the Subscription Agreement had been rescinded. Mr Choo-Choy said that it was unnecessary to rescind the Shareholders' Agreement as once the Subscription Agreement was rescinded the Plaintiffs were no longer shareholders. It was not for me to conduct a mini-trial on 23 May 2025 in respect of the proprietary claim. As the Chief Justice of Singapore stated in *Bouvier* at [151]:

> "It is trite that the court does not engage in complex questions of law or fact at the interlocutory stage."

91. Suffice to say, having considered all the arguments put forward in writing and orally, I was satisfied that the Plaintiffs' proprietary claim met the low threshold of a good arguable case/serious issue to be tried.

92. The Plaintiffs in this case asserted an interest in identifiable and distinct assets. I noted in particular the evidence in respect of the tracing work undertaken by Match Systems and the transfer of the Funds and their proceeds. No third party had claimed ownership or control of the relevant wallets and the balances have remained untouched and apparently have increased in value. I agreed that in the absence of the injunction sought, the balances would likely disappear and the Plaintiffs' prospect of being able to trace into an even longer cryptocurrency chain would be much weaker and more uncertain. The *status quo* should be preserved by way of a court order and not simply by way of an undertaking.

93. I agreed in the circumstances of this case that it was a counsel of prudence to take such measures as are calculated to preserve the *status quo*. I also agreed that the grant of the proprietary injunction was the measure that would best accomplish this.

94. I was satisfied that a proprietary injunction targeting specific assets should be granted. In my judgment, in respect of the proprietary claim (1) there was a serious issue to be tried; (2) the balance of convenience favoured the granting of a proprietary injunction targeting specific assets; and (3) it was just and convenient to grant such an injunction.

<u>Order</u>

95. For these reasons, I made an Order substantially in terms suggested by the Plaintiffs, such draft to include the amendments I specified during my exchanges with counsel.

David Doyle

THE HON. JUSTICE DAVID DOYLE
JUDGE OF THE GRAND COURT

250603 In the matter Target Global Growth Fund – FSD 85 of 2025 (DDJ) - Judgment