

**IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

[2022] SGHC 278

HC/OS 1139/2020 (Summons No 2703 of 2021)

Between

La Dolce Vita Fine Dining
Company Limited

... Plaintiff

And

- (1) Zhang Lan
- (2) Grand Lan Holdings Group
(BVI) Limited
- (3) Qiao Jiang Lan Development
Limited
- (4) Success Elegant Trading
Limited

... Defendants

HC/OS 1140/2020 (Summons No 2704 of 2021)

Between

La Dolce Vita Fine Dining
Group Holdings Limited

... Plaintiff

And

- (1) Zhang Lan
- (2) Grand Lan Holdings Group
(BVI) Limited
- (3) Success Elegant Trading
Limited

... Defendants

JUDGMENT

[Civil Procedure — Judgments and orders — Enforcement — Equitable
execution — Appointment of receivers]
[Evidence — Proof of Evidence — Admissions]
[Gifts — Donors]
[Trusts — Resulting trusts]

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La Dolce Vita Fine Dining Co Ltd
v
Zhang Lan and others and another matter

[2022] SGHC 278

General Division of the High Court — Originating Summons No 1139 of 2020
(Summons No 2703 of 2021) and Originating Summons 1140 of 2020
(Summons No 2704 of 2021)
Philip Jeyaretnam J
28, 29 September 2022

2 November 2022

Judgment reserved.

Philip Jeyaretnam J:

Introduction

1 Where a judgment debtor's interest in property was only equitable, such that execution at law against that property was not possible, there developed in equity a means for the judgment creditor to have recourse to that equitable interest in satisfaction of the judgment, namely by the appointment of a receiver. The court's discretionary power to appoint a receiver has been put on a statutory footing in the form of s 4(10) of the Civil Law Act 1909 (2020 Rev Ed), which provides:

Injunctions and receivers granted or appointed by interlocutory orders

(10) A Mandatory Order or an injunction may be granted or a receiver appointed by an interlocutory order of the court, either unconditionally or upon such terms and conditions as the court

thinks just, in all cases in which it appears to the court to be just or convenient that such order should be made.

2 The appointment of a receiver in aid of enforcement of a judgment is an interlocutory one, even though made after final judgment. It is inherently temporary and comes to an end once the judgment debt is paid.

3 The judgment creditors in this case seek the appointment of receivers over two bank accounts in the name of a company on the alternative grounds either that the judgment debtor is the beneficial owner of the moneys in the bank accounts or had effective control over the bank accounts tantamount to ownership in equity. They contend that receivers may be appointed even where the judgment debtor is not the beneficial owner so long as there is such effective control over the asset against which recourse is sought.

4 In my judgment, while effective control may evidence an equitable interest, receivers may not be appointed over property where the judgment debtor has no equitable interest, and has no enforceable right in relation to it that a receiver upon appointment may exercise in the debtor's stead. However, in this matter, I am satisfied that the judgment creditors have proven on a balance of probabilities that the moneys in the bank accounts belong beneficially to the judgment debtor and that it is just and convenient for receivers to be appointed in aid of satisfaction of the judgments.

5 I will now explain my determination.

Background facts

The parties

6 La Dolce Vita Fine Dining Company Limited (“LDV”) and La Dolce Vita Fine Dining Group Holdings Limited (“LDV Group”) are the plaintiffs in Originating Summonses 1139 of 2020 (“OS 1139”) and 1140 of 2020 (“OS 1140”) (collectively, “Summonses”) respectively. They are both limited liability companies incorporated in the Cayman Islands. LDV Group wholly owns LDV.¹

7 The first defendant in the Summonses is Mdm Zhang Lan (“Mdm Zhang”). She is a citizen of St Kitts and Nevis.²

8 Mdm Zhang wholly owns the second defendant in the Summonses, Grand Lan Holdings Group (BVI) Limited (“Grand Lan”) as well as the third defendant in OS 1139, Qiao Jiang Lan Development Limited (“Qiao Jiang Lan”). Grand Lan and Qiao Jiang Lan are companies incorporated in the British Virgin Islands (“BVI”).³

9 Success Elegant Trading Limited (“SETL”) is the fourth defendant in OS 1139 and the third defendant in OS 1140. SETL is a BVI company incorporated on 2 January 2014. Mdm Zhang was the owner of the sole share in SETL from the point of incorporation until 4 June 2014 when she transferred the share to AsiaTrust Limited (“AsiaTrust”) – trustee of the Success Elegant Trust – by way of a Deed of Addition of Assets to the Success Elegant Trust

¹ Cosimo Borelli’s 1st Affidavit dated 10 November 2020 (“1CB”) at paras 5–7 (Agreed Bundle of Documents, Volume 2 (“2AB”), p 501).

² 1CB at para 8 (2AB, p 502).

³ 1CB at paras 9–10 (2AB, p 502).

(“Deed of Addition”).⁴ AsiaTrust remains the owner of this share.⁵ Mdm Zhang was appointed the sole director of SETL on 12 February 2014 but was replaced by ATP Directors Limited, an affiliate of AsiaTrust, on 3 March 2015.⁶

10 The Success Elegant Trust is a family trust settled by Mdm Zhang for the benefit of her son, Mr Wang Xiaofei (“Mr Wang”) and his children and remoter issue. The declaration of trust is dated 3 June 2014.⁷

Procedural history

11 LDV and LDV Group are judgment creditors of Mdm Zhang, Grand Lan and Qiao Jiang Lan under two Hong Kong judgments dated 20 May 2020 (“HK Judgments”).⁸ The HK Judgments recognised and enforced two partial awards on liability and quantum rendered by the China International Economic and Trade Arbitration Commission on 28 April 2019, which in turn concerned the plaintiffs’ acquisition of shares in companies beneficially owned by Mdm Zhang (“the Acquisition”).⁹

12 LDV and LDV Group were granted leave to register the HK Judgments in Singapore and obtained registration orders on 11 November 2020 (“Singapore Orders”).¹⁰

⁴ Ang Chiang Meng’s 7th Affidavit dated 24 January 2022 (“7ACM”) at pp 2052–2053 (Agreed Bundle of Documents, Volume 4 (“4AB”), pp 2052–2053).

⁵ 7ACM at paras 16–17 (4AB, pp 1983–1984).

⁶ 7ACM at p 133 (4AB, pp 2110–2111).

⁷ 7ACM at pp 42–73 (4AB, pp 2019–2050).

⁸ Cosimo Borelli’s 4th Affidavit dated 9 June 2021 (“4CB”) at para 8 (Agreed Bundle of Documents, Volume 3 (“3AB”), p 1309).

⁹ 1CB at paras 30–31 (2AB, pp 510–511).

¹⁰ Cosimo Borelli’s 2nd Affidavit dated 26 February 2021 (“2CB”) at paras 13–14 (2AB, pp 1055).

The Credit Suisse and the Deutsche Bank accounts

13 As part of the Acquisition, the plaintiffs paid US\$254,419,156 into Mdm Zhang’s bank account held with Bank Safra Sarasin Hong Kong (“Safra Sarasin Account”) between 16 December 2013 and 13 June 2014.¹¹

14 US\$142,051,618 in cash and securities was transferred from the Safra Sarasin Account to a Credit Suisse AG bank account (“CS Account”) held in SETL’s name between 10 March 2014 and 21 July 2014. Of this sum, US\$85,225,000 was transferred from the CS Account to SETL’s bank account with Deutsche Bank AG (“DB Account”) between 27 March 2014 and 27 November 2014.¹²

15 At present, the CS Account and the DB Account (collectively, “the Bank Accounts”) contain approximately US\$22,005,981 and US\$33,373,585 respectively.¹³ These sums have been frozen by Credit Suisse AG (“CS”) and Deutsche Bank AG (“DB”) since March 2015 when the banks were served freezing orders directed only against Mdm Zhang granted by the Singapore High Court (“SG Freezing Orders”).¹⁴

16 I observe that the awards were of damages for negligent misrepresentation. The plaintiffs had sought rescission for fraudulent misrepresentation but did not succeed in this. Thus, even though the funds in the Bank Accounts came from the proceeds of sale, no question of tracing arises.

¹¹ 4CB at page 46 (3AB, p 1348).

¹² 4CB at page 46 (3AB, p 1348).

¹³ Plaintiffs’ Written Submissions in HC/SUM 2703/2021 dated 21 September 2022 (“PWS”) at para 14.

¹⁴ Cosimo Borelli’s 7th Affidavit dated 10 December 2021 (“7CB”) at paras 10–11 (3AB, pp 1929–1930).

The parties' cases

The plaintiffs' case

17 The plaintiffs seek to enforce the Singapore Orders *via* the appointment of receivers over the moneys and securities held in the Bank Accounts.

18 They contend that it is just and equitable for this court to appoint receivers by way of equitable execution over the Bank Accounts under O 51 r 1(1) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("2014 ROC") for the following reasons.

19 First, Mdm Zhang is the beneficial owner of the assets in the Bank Accounts by reason of a resulting trust. She is identified as the beneficial owner of the Bank Accounts in the bank documents, which include the form to open the CS Account dated 11 February 2014 ("CS Opening Form") and DB's Client Investment Risk Profile Form dated 7 March 2014 ("DB Profile Form").¹⁵ Mdm Zhang's contention that she is so identified because of anti-money laundering ("AML") and know-your-client ("KYC") requirements is artificial.¹⁶ On the flip side of the coin, there is no documentation to show that SETL or the beneficiaries of the Success Elegant Trust are the beneficial owners of these assets.¹⁷

20 Consistent with the above, CS and DB considered that the Bank Accounts fell within the scope of the SG Freezing Orders when these orders were directed only against Mdm Zhang.¹⁸ It is also significant that between

¹⁵ PWS at paras 49–56.

¹⁶ PWS at paras 73–75.

¹⁷ PWS at paras 57–63.

¹⁸ PWS at paras 64–66.

6 March 2015 and 30 March 2015, Mdm Zhang’s then-solicitors, Reed Smith Richards Butler (“Reed Smith”) and DB’s solicitors exchanged letters showing that both parties regarded Mdm Zhang as the beneficial owner of the DB Account (“the Letters”).¹⁹

21 To this, the following may be added: (a) SETL took no steps to set aside the SG Freezing Orders for more than seven years;²⁰ (b) when Cornucopiae Asset Management Ltd (“CAM”) – an asset management firm advising Mdm Zhang²¹ – informed CS that Mdm Zhang transferred the sole share in SETL to AsiaTrust in October 2014, it failed to mention that Mdm Zhang had also transferred her beneficial ownership of the assets in the CS Account to SETL;²² and (c) Mdm Zhang authorised and directed the transfer of approximately US\$32.3m from the CS Account (“CS Transfers”) and US\$35,832,587 from the DB Account (“DB Transfers”) to parties including herself and Mr Wang even after purportedly divesting her share in SETL.²³

22 Second, in so far as Mdm Zhang’s interest in the assets in the Bank Accounts is equitable, the plaintiffs are not able to rely on the traditional modes of legal execution to enforce the Singapore Orders against the Bank Accounts.²⁴ It is not feasible for the plaintiffs to commence garnishee proceedings as it is unclear whether SETL owes a debt in equity to Mdm Zhang. Nor are the assets in the Bank Accounts liable to execution by way of a writ of seizure and sale.

¹⁹ PWS at paras 67–71.

²⁰ PWS at para 72.

²¹ Zhang Lan’s 1st Affidavit dated 13 September 2021 (“1ZL”) at para 16 (3AB, pp 1582–1583).

²² PWS at paras 76–79.

²³ PWS at paras 81–93, 100–110.

²⁴ PWS at paras 35–39.

The appointment of receivers over the moneys and securities in the Bank Accounts is the most direct and effective way of enforcing the Singapore Orders.²⁵

23 In the alternative, if this court does not find that Mdm Zhang is the beneficial owner of the assets in the Bank Accounts, she exercised a level of control over these assets tantamount to ownership. Mdm Zhang could transfer the moneys in the Bank Accounts to any party she desired. On the strength of *JSC VTB Bank v Skurikhin and others* [2015] EWHC 2131 (Comm) (“*Skurikhin No. 1*”), this level of control suffices to warrant the appointment of receivers by way of equitable execution over the Bank Accounts.

Mdm Zhang’s case

24 Mdm Zhang contends that neither the Bank Accounts nor the moneys in them belong to her beneficially, and hence no question of appointing receivers over them can arise.²⁶ Before me, counsel for Mdm Zhang, Mr Kevin Cheng, clarified that while Mdm Zhang previously stated on affidavit that the beneficial ownership of the Bank Accounts passed to Mr Wang after she established Success Elegant Trust and transferred her share in SETL to AsiaTrust,²⁷ she now adopts the position that the assets in the Bank Accounts were held for the benefit of Mr Wang and his issue the moment they were transferred from the Safra Sarasin Account.

²⁵ PWS at paras 40–46.

²⁶ 1st Defendant’s Written Submissions in HC/SUM 2703/2021 and HC/SUM 2704/2021 dated 22 September 2022 (“1DWS”) at para 33.

²⁷ 1DWS at para 44; Zhang Lan’s 2nd Affidavit dated 2 July 2022 (“2ZL”) at para 34 (4AB, p 2692).

25 In support of this, Mdm Zhang submits that the CS Opening Form and the DB Profile Form pre-date the transfer of her interest in SETL to AsiaTrust and hence shed limited light on whether she retained beneficial ownership of the assets in the Bank Accounts.²⁸ On the other hand, the documents disclosed by Safra Sarasin Bank support the inference that Mdm Zhang transferred the moneys from the Safra Sarasin Account to the CS Account to fund the Success Elegant Trust.²⁹

26 CS and DB's decisions to freeze the Bank Accounts were rooted in prudence and not a belief that Mdm Zhang held a beneficial interest in the account.³⁰ Moreover, the Letters have to be viewed in light of the fact that SETL's then-solicitors, Zhong Lun Law Firm ("Zhong Lun"), subsequently wrote to DB to state that Mdm Zhang did not hold any beneficial interest in the DB Account.³¹

27 Next, the CS Transfers were made on the advice of Ms Xiao Yanming ("Ms Xiao"), Chairman of CAM and Mdm Zhang's personal friend, and Mr James Chen ("Mr Chen"), a lawyer from K&L Gates Straits Law LLC who assisted Mdm Zhang with the setting up of the Success Elegant Trust.³² Furthermore, Mdm Zhang authorised the CS Transfers because Mr Chen had failed to remove Mdm Zhang as the sole signatory of the Bank Accounts.³³ The CS Transfers were either made to Mr Wang in accordance with the terms of the

²⁸ 1DWS at paras 36–38.

²⁹ 1DWS at paras 52–54.

³⁰ 1DWS at paras 41, 55–61.

³¹ 1DWS at paras 39–40.

³² 1DWS at para 45.

³³ 1DWS at para 46.

Success Elegant Trust³⁴ or pertained to moneys which SETL ought not to have held in the first place.³⁵

28 As for the DB Transfers, these post-dated the formation of the Success Elegant Trust, at which point Mdm Zhang no longer had an interest in the material assets. In any event, there are valid explanations for the DB Transfers.³⁶

SETL's case

29 Mdm Zhang had intended to set up a family trust to benefit Mr Wang and his children since 2010. To this end, Ms Xiao advised Mdm Zhang to set up an investment holding company in the BVI and have this company first hold the assets to be eventually held by the family trust. As it took some time to set up the family trust, the contemplated arrangement would allow CAM to provide its expertise and services regarding the investment of the assets as soon as possible.³⁷ The BVI company and the family trust eventually took the form of SETL and Success Elegant Trust. SETL submits that this shows that Mdm Zheng parted with ownership of the assets held in the Bank Accounts to SETL absolutely for the purpose of setting up the Success Elegant Trust.³⁸

30 SETL submits that its case is consistent with the contemporaneous documents surrounding the constitution of the Success Elegant Trust. For example, two Certificates of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting (“W-8 BEN Forms”) dated 11 February

³⁴ 1DWS at para 47.

³⁵ 1DWS at para 48.

³⁶ 1DWS at paras 70–81.

³⁷ Success Elegant Trading Limited’s Written Submissions in HC/SUM 2703/2021 and HC/SUM 2704/2021 dated 22 September 2022 (“SETL WS”) at paras 23–24, 130.

³⁸ SETL WS at paras 33, 37, 71–80.

2014 and submitted by SETL to CS provide that SETL is the beneficial owner of the income in the CS Account. These W-8 BEN Forms should be contrasted with a separate W-8BEN Form Mdm Zhang submitted in respect of her personal account with CS. In the latter form, Mdm Zhang declared that she was the beneficial owner of the income in her personal account.³⁹

31 Separately, SETL takes issue with the plaintiffs' reliance on several documents or certain evidence to prove that Mdm Zhang is the beneficial owner of the Bank Accounts under a resulting trust:

(a) The DB Profile Form, DB Client Investment Risk Profile form dated 28 March 2014 ("DB Risk Profile Form"),⁴⁰ Bank Safra Sarasin Hong Kong remittance forms dated 10 March 2014, 13 March 2014, 24 March 2014 and 21 July 2014 ("the Remittance Forms") and the invoice from AsiaTrust to Mdm Zhang dated 5 February 2015 ("the AsiaTrust Invoice")⁴¹ constitute inadmissible hearsay and, further, cannot be relied upon to contradict the Deed of Addition of Assets to the Success Elegant Trust under the parole evidence rule.⁴²

(b) The CS Opening Form, the DB Profile Form, SETL's CS Account Mandate dated 11 February 2014⁴³ and SETL's Application to open the DB Account⁴⁴ were prepared for the purpose of AML and KYC

³⁹ SETL WS at paras 109–113.

⁴⁰ 4CB at page 30 (3AB, p 1954).

⁴¹ Cosimo Borelli's 11th Affidavit dated 20 September 2022 ("11CB") at p 43 (Agreed Bundle of Documents, Volume 5 ("5AB"), p 2816).

⁴² SETL WS at paras 62–66.

⁴³ 4CB at para 26(b), pp 82–85 (3AB, pp 1315, 1384–1387).

⁴⁴ 4CB at para 26(b), pp 87–89 (3AB, pp 1389–1391).

checks.⁴⁵ A beneficial owner for the purpose of these checks is not necessarily the beneficial owner of the property in law. In any event, these documents pre-date the transfer of Mdm Zhang's interest in SETL to AsiaTrust.⁴⁶

(c) The Letters must be set against SETL and Mdm Zhang's consistent positions that the Bank Accounts are legally and beneficially owned by SETL.⁴⁷

(d) Three of the four Remittance Forms pre-date Mdm Zhang's transfer of her share in SETL to AsiaTrust and would naturally indicate that Mdm Zhang owned SETL.⁴⁸ Bank Safra Sarasin Hong Kong prepared the final remittance form dated 21 July 2014 without Mdm Zhang's input.⁴⁹

(e) CS and DB's decisions to comply with the SG Freezing Orders are of limited probative value. Neither party was aware of Mdm Zhang's intentions when she transferred the assets from the Safra Sarasin Account to the Bank Accounts.⁵⁰ For the same reasons, little weight can be placed on SETL's decision not to challenge the SG Freezing Order.⁵¹

(f) The CS Transfers and the DB Transfers shed limited light on Mdm Zhang's intentions at the time she transferred the moneys from the

⁴⁵ SETL WS at paras 90–99.

⁴⁶ SETL WS at para 100.

⁴⁷ SETL WS at para 102.

⁴⁸ SETL WS at para 131(a).

⁴⁹ SETL WS at para 131(b).

⁵⁰ SETL WS at paras 136–143.

⁵¹ SETL WS at paras 144–147.

Safra Sarasin Account to the CS Account.⁵² In any event, most of the CS Transfers were made for the benefit of Mr Wang⁵³ and the DB Transfers were authorised or ratified under the terms of the Success Elegant Trust.⁵⁴ That Mdm Zhang remained the sole signatory to the Bank Accounts stemmed from administrative delays on the part of AsiaTrust and Mr Chen.⁵⁵ Likewise, even if Mdm Zhang had transferred assets out of the CS Account for her benefit, this did not necessarily mean that she is the beneficial owner of the assets in the Bank Accounts. Mdm Zhang could have been acting in breach of her fiduciary duties.⁵⁶

32 Finally, SETL submits that if Mdm Zhang is found not to possess beneficial ownership of the assets in the Bank Accounts, this court cannot appoint receivers over the Bank Accounts on the basis of her purported control over the assets. *Skurikhin No. 1* represents a flawed extension from precedent and is inconsistent with established equitable principles.

Issues for determination

33 The issues for my determination are broadly as follows:

- (a) Whether in law receivers may be appointed over property in which the judgment debtor has no equitable interest but does have effective control.

⁵² SETL WS at paras 116–119, 129.

⁵³ SETL WS at paras 122, 124.

⁵⁴ SETL WS at para 104.

⁵⁵ SETL WS at para 123.

⁵⁶ SETL WS at para 121.

(b) Whether Mdm Zhang beneficially owns the moneys in the Bank Accounts.

34 The second issue involves the determination of an evidentiary sub-issue, namely whether the DB Profile Form, the DB Risk Profile Form, the Remittance Forms and the AsiaTrust Invoice constitute inadmissible hearsay or are to be excluded by the parol evidence rule.

Issue 1: Whether in law receivers may be appointed over property in which the judgment debtor has no equitable interest but does have effective control

35 The plaintiffs rely on *Skurikhin No. 1* where at [45] the English High Court accepted the judgment creditor’s submission summarised at [38] and [39], namely that a receiver by way of equitable execution may be appointed over whatever may be considered in equity as the assets of the judgment debtor, and that specifically:

... property subject to trust or analogous foreign arrangements would be regarded in equity as assets of the judgment debtor if he has the legal right to call for those assets to be transferred to him or to his order, or if he has *de facto* control of the trust assets in circumstances where no genuine discretion is exercised by the trustee over those assets.

36 The plaintiffs contend that this extends the reach of receivership by way of equitable execution to situations where the judgment debtor has *de facto* control of the trust assets even if he has no legal right of control or legal power to direct how those assets are dealt with. In this judgment, I use the terms “*de facto* control” and “effective control” (neither of which are terms of art) interchangeably.

37 First of all, it is not clear to me that the court in *Skurikhin No. 1* was doing more than noting that *de facto* control of trust assets may, in appropriate circumstances, be sufficient evidence from which to infer on a balance of probabilities that the judgment debtor either has a beneficial interest in those assets or has a legal right of control over those assets.

38 My more limited reading of this passage appears to be how the question was approached in a later decision in the same litigation made by a different Deputy Judge of the English High Court, namely *JSC VTB Bank (a company incorporated in Russia) v Skurikhin and others* [2019] EWHC 1407 (Comm) (“*Skurikhin No. 2*”). *Skurikhin No. 2* concerned the application to discharge the receivership order made in *Skurikhin No. 1*. She said at [103]:

The significance of *de facto* control over assets is that, where it is demonstrated to exist, that then begs the question whether those who are submitting to that control do so because they recognise the right of the person exercising that control to dictate to them what should be done with those assets. Thus, proof of *de facto* control may justify drawing the inference that the person exercising *de facto* control is the ultimate beneficial owner of the assets (at least in a broad sense of that term) ... Unless that inference can in all the circumstances properly be drawn, *de facto* control does not, in and of itself, warrant treating a third party’s assets as belonging to a judgment debtor in equity and hence available to be enforced against. There may be other explanations for the appearance of control which do not justify drawing the inference.

39 At [109] of her judgment, she expressed her view that the Judge in *Skurikhin No. 1* had indeed drawn an inference from Mr Skurikhin’s *de facto* control that “the trustees recognised that he had a right to issue directions which they would be obliged to follow”. For completeness, I note that there was an appeal from her judgment, which was dismissed. The judgment in that appeal is reported at *JSC VTB Bank (a company incorporated in Russia) v Skurikhin and others* [2021] 1 WLR 434 (“*Shukrikhin CA*”). *Shukrikhin CA* was not cited to

me by counsel, perhaps because, being focused on abuse of process, it was not considered material to the questions before me. However, it is worth noting that the summary of the decision in *Skurikhin No. 1* at [25] of the English Court of Appeal decision is consistent with her reading of it.

40 Thus, I do not consider *Skurikhin No. 1* to be authority for the proposition advanced by the plaintiffs.

41 The other English authorities, which were also discussed in both of the *Skurikhin* decisions, do not support the plaintiffs' proposition. They concern rights that a judgment debtor has and which a receiver, if appointed, may then exercise in the debtor's stead. In *Tasarruf Mevduati Sigorta Fonu v Merrill Lynch Bank and Trust Co (Cayman) Ltd and others* [2012] 1 WLR 1721, the judgment debtor had the unfettered discretion to revoke the trust. This was a *right* that could be delegated to receivers for them to exercise. In *Blight v Brewster* [2012] EWHC 165 (Ch), the judgment debtor had the *right* to withdraw funds from a pension upon notice.

42 The distinction between rights that a judgment debtor has in respect of assets and a merely factual control that a judgment debtor may have is a principled one. A receiver is appointed to stand in the place of the debtor and do those things which the debtor should, as a matter of good conscience, have done in order to satisfy the judgment debt. This cannot however extend to matters requiring the cooperation of a third party not bound to obey the debtor. Requests may be phrased as instructions, and usually acceded to by another for reasons such as personal affection or alignment of interests, but that does not mean that the person making the request can compel compliance. Without a right to do so, if a receiver is appointed, the receiver will not be able to compel compliance with any instruction he may give in place of the debtor, and the third

party will be free to withhold cooperation. Thus, while equity presumes that what ought to be done is done, equity also does not act in vain.

43 Accordingly, as the plaintiffs do not assert that Mdm Zhang had any right over the moneys in the Bank Accounts other than those derived from her beneficial ownership of them, I turn to the second issue of beneficial ownership.

Issue 2: Whether Mdm Zhang beneficially owns the moneys in the Bank Accounts

44 The plaintiffs bear the burden of proof to establish Mdm Zhang's beneficial ownership on a balance of probabilities. Both they and the defendants were content to rest on the affidavit evidence, without cross-examination of witnesses.

45 As I have noted at [19], the plaintiffs put their case on the basis of a resulting trust. Both they and the defendants accept that a resulting trust arises when one person transfers property to another without the intention to benefit the other. The plaintiffs in this case go further and rely on evidence that they say shows that Mdm Zhang positively intended to retain beneficial ownership of the monies. On the facts of this case, evidence of intention to retain beneficial ownership would displace any donative intent. The defendants contend that as Mdm Zhang transferred the moneys to the Bank Accounts preparatory to her gifting SETL to the Success Elegant Trust, it must be inferred that she intended SETL to have the benefit of the moneys. There would be no point, in their submission, for her to give SETL to the Success Elegant Trust without its having the benefit of the moneys in its own accounts.

46 In this case, the plaintiffs do not rely on any presumption of resulting trust and I agree that there is no need nor utility to resort to presumptions in a

case like this where there is both direct and indirect evidence of the transferor's intention: see *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 at [52]. The court's task is to determine on the evidence whether the plaintiffs have met their burden. In doing so, the court objectively assesses the transferor's subjective intention at the time of the transfers: see *Tan Yok Koon v Tan Choo Suan and another and other appeals* [2017] 1 SLR 654 ("*Tan Yok Koon*") at [83]. In making this assessment, evidence of subsequent conduct of the transferor is admissible and potentially relevant, even where not closely connected to the time of the transfers. This is regardless of whether such evidence bears in favour of the transferor or against: see *Tan Yok Koon* at [110]. I additionally note that in this case, unusually, it is the transferor who contends before the court that her intention was donative.

47 Before assessing the evidence, I deal with the defendants' evidentiary objections. First, they object to admissibility of the DB Profile Form, the DB Risk Profile Form, the Remittance Forms and the AsiaTrust Invoice. The objection is that their contents are inadmissible hearsay as the makers of these documents have not been called.

48 The plaintiffs rely on s 32(1)(b) of the Evidence Act 1893 (2020 Rev Ed) ("EA") for the admission of these documents on the basis that the statements contained in them were made by persons in the ordinary course of business, and the documents form part of the relevant company's records. I accept that this is the case, and hold that the documents are admissible. However, weight is another matter and must be assessed carefully, especially where there is any ambiguity or lack of clarity.

49 Secondly, they contend that these documents cannot be relied upon to contradict the Deed of Addition under the parol evidence rule. However, the

plaintiffs do not rely on these documents to contradict the Deed of Addition. They do not dispute that from 4 June 2014, Mdm Zhang's sole share in SETL was transferred to the Success Elegant Trust. Their case is that the moneys in the Bank Accounts are not and have never been beneficially owned by SETL. The Deed of Addition was limited on its face to her share in SETL. If she had retained the beneficial interest in the moneys in the Bank Accounts, the Deed of Addition made no mention of it nor purported to transfer it to the Success Elegant Trust.

50 Turning to the evidence, the plaintiffs rely on the following principal items of evidence:

(a) An internal email of Bank Safra Sarasin dated 13 March 2014 indicating that their understanding was that the transfers to the CS Account were “not only for tax planning purpose, but [Mdm Zhang's] lawyer [was] helping her to ease the concern on the with-recourse term of her business sold to an PE”.⁵⁷ Thus, her motive in making the transfers to accounts in the name of SETL was to protect herself from potential claims by the plaintiffs.

(b) Mdm Zhang's confirmations concerning beneficial ownership, as reflected in the respective banks' documentation:

(i) In the CS Opening Form, she declared and confirmed that she was “the beneficial owner(s) of the assets in the account”⁵⁸

⁵⁷ Cosimo Borelli's 5th Affidavit dated 24 August 2021 at para 11, p 25 (Agreed Bundle of Documents, Volume 3 (“3AB”), pp 1479, 1498–1499).

⁵⁸ 4CB at p 64 (3AB, p 1366).

and promised to “notify [CS] immediately about any changes in the beneficial ownership of the assets in the [CS] account”.⁵⁹

(ii) In the DB Profile Form, her role in the corporate account was identified in three distinct ways, namely authorised signer, shareholder and “beneficial owner”.⁶⁰ She confirmed the accuracy of this information and undertook to notify DB promptly of any change.⁶¹

(c) Mdm Zhang’s evidence in these proceedings concerning that bank documentation, which was that they correctly reflected the position prior to 4 June 2014.⁶²

(d) Mdm Zhang’s apparent unfettered operation of the Bank Accounts as sole signatory after 4 June 2014 and before the Freezing Orders. The plaintiffs rely in particular on two groups of transactions:

(i) The first comprises two transfers she made from the CS Account, first of US\$3 million on 22 September 2014 and secondly of ¥3 million on 10 February 2015, for which she has offered no explanation, offering only the excuse that she is “unable to locate the relevant documents and information”.⁶³ The plaintiffs point out that SETL, no doubt appreciating the significance of its inaction in relation to these two transfers from the Bank Accounts which it claims to beneficially own, has

⁵⁹ 4CB at p 65 (3AB, p 1367).

⁶⁰ 7CB at p 30 (3AB, p 1954).

⁶¹ 7CB at p 33 (3AB, p 1957).

⁶² 1ZL at para 26 (3AB, p 1586).

⁶³ 1ZL at para 31(c) (3AB, p 1588).

belatedly demanded an explanation from Mdm Zhang and reserved the right to make a claim against her, by their solicitors' letter dated 19 January 2022 to her solicitors.⁶⁴

(ii) The second is a transfer from the DB Account on 26 November 2014 to Metro Joy International Limited,⁶⁵ which funds have been traced into the purchase of a condominium apartment in New York, that has been held by the United States District Court for the Southern District of New York to be owned by Mdm Zhang regardless of what legal structures were put in place.⁶⁶

(e) Mdm Zhang's reaction to the Hong Kong and Singapore Freezing Orders, and in particular two things:

(i) The transfers out of the DB Account of sums totalling US\$35,832,587. Several of the payment instructions were hand-marked "TOP URGENT" and were given in the two days immediately following her being given notice of the Hong Kong Freezing Orders.

(ii) Reed Smith's confirmation dated 6 March 2015 to DB's solicitors⁶⁷ that she maintained the bank account at that time.

51 Reed Smith's confirmation read as follows:

1. We act for Ms. Zhang Lan.

⁶⁴ PWS at para 87; 7ACM at pp 193–194 (4AB, pp 2170–2171).

⁶⁵ 11CB at p 42 (5AB, p 2819).

⁶⁶ 11CB at p 63 (5AB, p 2840).

⁶⁷ Cosimo Borelli's 9th Affidavit dated 10 June 2022 at p 45 (4AB, p 2241).

2. We are instructed that Ms Zhang maintains the following account with you:

A/C Name: Success Elegant Trading Limited

A/C No.: [redacted]

3. We are further instructed that you have frozen the aforementioned account by reason of court orders which have been served on you. Please provide us with copies of the relevant court orders.

4. Ms Zhang is taking legal action to set aside the said court orders. In the meantime, you are reminded of and requested to comply strictly with your duty of confidentiality towards Ms. Zhang. In particular, you are not to disclose any information and/or documents relating to Ms. Zhang and/or the aforementioned account to any third parties without the express consent of Ms Zhang.

52 The defendants in their counterarguments first note that there is evidence that Mdm Zhang had considered setting up a family trust for some time, as evidenced, for example, in a Bank Safra Sarasin client profile form of 29 November 2013,⁶⁸ when she set up the account with Bank Safra Sarasin that would receive the sale proceeds a few weeks later. Secondly, they suggest that the references to beneficial ownership in the bank documentation mean ultimate beneficial ownership for the purpose of AML regulations and so are consistent with Mdm Zhang owning SETL until 4 June 2014 rather than having a direct beneficial interest in the Bank Accounts. This accords with the natural inference to be drawn that when an individual provides his funds to a company that he wholly owns so that it may purchase a property, his intention is probably for the company legally and beneficially to own first the money and then the property purchased with that money: see *Nightingale Mayfair Ltd v Mehta and others* [1999] All ER(D) 1501.

⁶⁸ 1DWS at para 53; 1ZL at p 1832 (3AB, p 1832).

53 The defendants then point to the fact that some of the transfers Mdm Zhang made out of the Bank Accounts were later ratified by SETL and AsiaTrust on behalf of the Success Elegant Trust. In general, their contention is that Mdm Zhang's intention was to give the moneys to SETL for the benefit of her son and his issue as beneficiaries of the Success Elegant Trust. Any delay in changing the signatory for the Bank Accounts or lack of documentation of approvals by SETL or the Success Elegant Trust for transfers from them while Mdm Zhang was the sole signatory is not Mdm Zhang's fault but that of her professional advisers.

54 I infer that Mdm Zhang was motivated by a desire to protect her funds from potential claims by the plaintiffs arising from the sale without giving up her ability to make use of those funds for her own benefit. Given that the plaintiffs did not succeed in the arbitrations on their claims for rescission for fraudulent misrepresentation, no question of tracing arises and so had Mdm Zhang gifted the funds to SETL they would indeed have been beyond the plaintiffs' reach. However, the evidence shows that while she instructed and caused the setting up of the Success Elegant Trust and transferred ownership of SETL to it, she did not intend to relinquish her beneficial interest in the moneys in the Bank Accounts. That she retained her beneficial interest in the moneys is reflected in:

- (a) Her transferring moneys from the Bank Accounts for her own purposes prior to the Freezing Orders without complaint from SETL until January 2022, more than seven years after the event and long after AsiaTrust had taken control of the board of SETL (see [9] above). I infer that Mdm Zhang considered herself free to make use of the moneys in the Bank Accounts and further infer that this was because she had never

intended to give the moneys away to SETL and thus remained the beneficial owner of those moneys.

(b) Her haste in transferring moneys out of the DB Account after she had notice of the Hong Kong Freezing Orders and before the SG Freezing Orders. I infer that she did this precisely because she considered the moneys in it to be her own and so at risk from the plaintiffs' claims if she did not take steps to move those moneys.

(c) Reed Smith's confirmation on her behalf that she maintained the DB Account at that time. The word "maintain" when used in relation to a bank account is not apt to describe merely being a signatory of an account. For someone to be said to maintain an account that account must be theirs. This was a formal communication by her lawyers in the wake of the SG Freezing Orders. There is no basis for interpreting the word in any other way, especially when her lawyers identified Mdm Zhang as the person to whom DB owed the duty of confidentiality. This could only mean that she was DB's customer in respect of the DB Account.

55 While the W-8 BEN Forms relied on by Mdm Zhang are consistent with her case that SETL beneficially owned the Bank Accounts from the outset, their probative value is outweighed by the rest of the evidence, and in particular the matters I have summarised in the preceding paragraph. Mdm Zhang's subjective intention at the time when she transferred moneys into the Bank Accounts was not to make a gift of them but instead to retain the beneficial interest in them. This is most clearly revealed by her own conduct in relation to the Bank Accounts and the moneys in them after 4 June 2014. It could be said that she intended to execute whatever documents she was advised to execute so as to

hinder the plaintiffs from having recourse to her assets, while at the same time retaining full control over those assets so that she could deal freely with them for her own benefit. In the words of Reed Smith, this indeed meant that notwithstanding the Bank Accounts being in SETL's name, she maintained them.

56 Reed Smith was Mdm Zhang's agent. Their confirmation that she maintained the DB Account operates as an admission under ss 17 and 18 of the EA. No evidence was proffered that Reed Smith made this admission mistakenly and I accept it was true that Mdm Zhang maintained the DB Account as of 6 March 2015, and hence was the beneficial owner of the moneys in it. This resolves against her any possible ambiguity in her declaration of beneficial interest over the moneys in the account made in the DB Profile Form.

57 Neither Mdm Zhang nor SETL contended that she had any different intention concerning the moneys in one account as opposed to the other. I find that her intention concerning both Bank Accounts was the same, and the evidence shows that it was to retain beneficial ownership and not give the moneys to SETL.

Conclusion

58 The defendants did not seriously contend that if the moneys in the Bank Accounts belong beneficially to Mdm Zhang it is nonetheless not just and convenient to make the receivership orders. Nonetheless, I briefly explain why it is just and convenient. First, the class of assets in this case, namely moneys held in bank accounts, is property that is amenable to execution at law if the bank account is in the name of the judgment debtor. Secondly, the fact that the moneys are owned beneficially by Mdm Zhang but are not in her name raises an obvious difficulty to the use of execution processes at law such as a garnishee

order. Thirdly, the appointment of receivers over the Bank Accounts will enable recourse by the judgment creditors to those moneys to satisfy the judgments in a manner that is cost-effective and not unduly burdensome.

59 I therefore grant the relief sought, namely the appointment of receivers of the Bank Accounts. The SG Freezing Orders remain in force, pending satisfaction of the judgments. I will hear parties both on the form of the receivership orders and on costs. Prior to my doing so, parties are to file within 14 days of this judgment written submissions limited to a total of 15 pages each.

Philip Jeyaretnam
Judge of the High Court

Han Guangyuan, Keith and Angela Phoon Yan Ling (Oon & Bazul LLP) for the plaintiffs in Originating Summons No 1139 of 2020 and Originating Summons No 1140 of 2020;
Kevin Cheng, Joshua Tan Ming En and Poh Kai Yan, Samuel (Fu Kaiyan) (Invictus Law Corporation) for the first defendant in Originating Summons No 1139 of 2020 and Originating Summons No 1140 of 2020;
Koh Li Qun, Kelvin (Xu Liqun), Kevin Elbert, Tan Shi Ying, Crystal and Phoon Wuei (TSMP Law Corporation) for the fourth defendant in Originating Summons No 1139 of 2020 and the third defendant in Originating Summons No 1140 of 2020;
Koh Zhen-Xi, Benjamin (Allen & Gledhill LLP) for Deutsche Bank AG (watching brief).