IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO. FSD 133 OF 2024 (DDJ)

BETWEEN:

(1) CANTERBURY SECURITIES, LTD. (IN OFFICIAL LIQUIDATION)

(2) KAREN SCOTT AS JOINT OFFICIAL LIQUIDATOR OF CANTERBURY SECURITIES, LTD.

(3) RUSSELL HOMER AS JOINT OFFICIAL LIQUIDATOR OF CANTERBURY SECURITIES, LTD.

Plaintiffs

AND:

(1) ERIN WINCZURA

(2) PFS LTD.

(3) CANTERBURY GROUP

Defendants

Before:	The Hon. Justice David Doyle
Appearances:	Alice Carver and John Harris of Nelsons Attorneys at Law Ltd for the Plaintiffs
Heard:	27 November 2024

Ex Tempore Judgment delivered: 27 November 2024

Draft Transcript of Ex Tempore Judgment circulated: 27 November 2024

Transcript approved: 29 November 2024

Determination of application for an adjournment and application pursuant to Order 19 rule 7 of the Grand Court Rules for a declaration and orders against the First Defendant in default of defence – the relevant law and procedure

JUDGMENT

The Summons

1. By summons dated 18 October 2024 (the "Summons") the Plaintiffs seek relief against the First Defendant on the basis that she has failed to file a defence to the Plaintiffs' Amended Statement of Claim dated 10 September 2024. The Plaintiffs in the Summons seek a declaration that the First Defendant holds a residential property in Grand Cayman on trust for the First Plaintiff, an order that the property be transferred to the First Plaintiff and an order that the First Defendant do pay the Plaintiffs' costs of the Summons. It is stated that the grounds upon which the Plaintiffs seek the relief claimed are set out in the first affidavit of Karen Scott sworn on 23 April 2024.

The application for an adjournment

2. This morning Ms Natasha Bodden, with no advance notice from her, appeared on behalf of Michael Watler stated to be the husband of the First Defendant and applied for an adjournment. Ms Bodden stated that Mr Watler had filed divorce proceedings yesterday and was concerned in respect of the residential property referred to in the Summons.

3. Having heard from counsel I refused the application for an adjournment. The Summons and a letter dated 28 October 2024 giving notice of today's hearing and the relief claimed was affixed to the door of the property as long ago as 12:01pm on 28 October 2024 and further contact was made on 15 November 2024. Ms Alice Carver for the Plaintiffs brought to my attention emails from the

First Defendant requesting on Friday 22 November 2024 that Natasha Bodden, her husband's attorney, be put in "the loop for all communications, as he has his own rights and interests. I think you guys should move the hearing as he was not notified that any of this was going on as we have been going through divorce proceedings FYI."

4. Ms Carver, with some considerable force, submitted that this is just another example of a further belated attempt orchestrated by the First Defendant to prevent the court from assisting the First Plaintiff in the recovery of assets. Ms Carver also referred the court to *Independent Trustee Services Ltd v GP Noble Trustees Ltd and others* [2012] EWCA Civ 195; [2012] 3 ALL ER 210 and in particular at [26], [27], [32], [43], [62], [83] and [85].

5. The belated indication that divorce proceedings had been filed yesterday was insufficient to lead me to conclude that the hearing of the Summons should be adjourned. On the basis of the evidence before the court, in my judgment it was appropriate to proceed with the hearing of the Summons. The somewhat desperate attempt to derail the Summons failed because it was not in the interests of justice to permit it to succeed.

The pleadings

6. The general endorsement of the Plaintiffs' writ of summons dated 25 April 2024 indicated that the First Plaintiff claimed "(a) as against the First Defendant damages and/or compensation for breach of duties owed at common law and/or fiduciary duty arising from the Plaintiff's sale of shares subject to an agreement dated August 2018 between the First Plaintiff and Fortunate Drift Limited and/or damages and/or compensation in respect of the First Plaintiff's (sic) breach of such agreement and/or damages for the wrongful dissipation of the First Plaintiff's assets and/or an account and (a) (sic) as against the First, Second, and Third Defendants damages for unlawful means conspiracy and /or an account."

7. In the Statement of Claim dated 23 August 2024 the Plaintiffs claimed against the First Defendant (1) an account of unauthorised sales of shares in Yangtse River Development Ltd with a total known proceeds of sale being specified at US$19,959,397.18 (the "Proceeds of Sale") (2) an order that the First Defendant is liable for breach of trust in paying away the Proceeds of Sale and (3) damages for breach of fiduciary duty and for conspiracy.

8. It appears from the "Default Interlocutory Judgment" issued on 25 September 2024 against the First Defendant that the First Defendant filed an acknowledgement of service on 9 August 2024 but no defence was filed.

9. The Statement of Claim appears to have been amended on 6 September 2024 pursuant to Order 20 rule 3 of the Grand Court Rules ("GCR").

10. It appears from paragraph 4 of the affidavit of Jennifer Rudd sworn on 23 September 2024 that the Amended Statement of Claim was served on 10 September 2024 and the First Defendant in effect acknowledged such service by email dated 10 September 2024 at 5:02pm.

11. Under Order 20 rule 3(1) of the Grand Court Rules ("GCR") a party may, without leave of the court, amend its pleadings once at any time before the pleadings are deemed to be closed and, where the party does so, the party must serve the amended pleading on the opposite party. Under Order 20 rule 3(2)(b) where an amended statement of claim is served on a defendant the period of service of the defendant's defence or amended defence, as the case may be, shall be either the period fixed by or under the GCR for service of the defendant's defence or a period of 14 days after the amended statement of claim is served on the defendant, whichever expires later. Under Order 18 rule 2(1) subject to rule 2(2) a defendant who gives notice of intention to defend an action must, unless the court gives leave to the contrary, serve a defence on the plaintiff before the expiration of 14 days after the time limited for acknowledging service of the writ or after the statement of claim is served on the defendant, whichever is the later.

12. The time for the First Defendant to file and serve a defence to the Amended Statement of Claim has long expired. The First Defendant has not filed a defence to the unamended or Amended Statement of Claim.

13. In the Amended Statement of Claim the Plaintiffs at paragraph 40(b) define what they describe as a residential property at 24 Shamrock Road, Cayman Islands as the Property. At paragraph 40(b) it was pleaded that the First Defendant on 8 May 2020 purchased the Property for US$2.4 million with funds from Canterbury Group's "accounts with banks and brokers which derived from Proceeds of Sale." In the Amended Statement of Claim at paragraph 47 it is pleaded that:

> "The Property represents the traceable proceeds from the Proceeds of Sale and as such Ms. Winczura [the First Defendant] holds the Property on constructive trust for CSL [the First Plaintiff] and CSL seeks an order that the Property be transferred to CSL."

Paragraph 2A on the last page of the Amended Statement of Claim reads:

> "2A An order that the Property be transferred to CSL"

Such section starts with the words "AND THE PLAINTIFF (sic) CLAIMS".

Default interlocutory judgment against Second and Third Defendants

14. On 3 June 2024 the Clerk of the Court signed a default interlocutory judgment on the basis that "no notice of intention to defend had been filed by the Second Defendant or the Third Defendant". The words "Reason: Approved by Shiona Allenger, CI" appeared just above the official stamp of the "Clerk of Court". The document, presumably drafted by the attorneys for the Plaintiffs, read "the Plaintiffs do have judgment against the Defendant (sic) to be assessed together with the costs to be assessed."

Default interlocutory judgment against First Defendant

15. On 25 September 2024 the Clerk of the Court signed a default interlocutory judgment against the First Defendant on the basis that no defence had been filed by the First Defendant "within the time prescribed by Order 18, rule 2 and Order 20, rule 3(2)(b) of the Grand Court Rules". The judgment was in the following terms:

> "1. The First Defendant is liable in damages, in an amount to be assessed, for breach of trust in paying away the Proceeds of Sale (as defined in the Amended Statement of Claim);
>
> 2. The First Defendant is liable to the Plaintiffs for damages, in an amount to be assessed, for breach of fiduciary duty in respect of the FDL Fraud (as defined in the Amended Statement of Claim) and her dealings with and concealment of the Proceeds of Sale;

3. The First Defendant is liable to the Plaintiffs for damages to be assessed for conspiracy; and

4. Costs to be assessed."

The words "Reason: Approved by Shiona Allenger, CI" appeared just above the official stamp of the "Clerk of Court".

The unless debarring order

16. On 20 October 2024, for the reasons stated in a judgment delivered on 17 October 2024, I made the following order:

"1. Unless the Defendants do by 3.00pm on 16 October 2024 comply with paragraph 1 of the Order dated 26 April 2024, whereby the Defendants were required to provide to the Plaintiffs the information and documents specified therein, then the Defendants be debarred from further defending the action in FSD 133 of 2024 (DDJ) or from filing any application or evidence therein or progressing the Second and Third Defendants' summons dated 29 July 2024 or the First Defendant's summons dated 19 August 2024 without leave of the Court.

2. The Defendants do pay the Plaintiffs' costs of and occasioned by the Summons to be taxed on the indemnity basis and paid on a joint and several basis forthwith.

3. The Defendants do by 3.00pm on 16 October 2024 make an interim payment in the amount of US$35,000 on account of such costs."

The debarring order

17. On 1 November 2024 (not 7 November 2024 as stated at paragraph 6 of the Plaintiffs' written submissions dated 21 November 2024) I made the following order:

"1. The Defendants having failed to comply with paragraph 1 of the Order of the Honourable Justice Kawaley dated 26 April 2024 or paragraph 1 of the Order of the Honourable Justice Doyle dated 2 October 2024, are debarred from further defending this action or from filing any application or evidence herein or progressing the Second and Third Defendants' summons dated 29 July 2024 or the First Defendant's summons dated 19 August 2024 without leave of the Court.

2. The Defendants do pay the Plaintiffs' costs of and occasioned by the Summons to be taxed on the indemnity basis and paid on a joint and several basis forthwith."

The relevant law and procedure

18. Under Order 19 rule 7 (1) of the GCR where a defendant has failed to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under the GCR for service of the defence apply to the court for judgment, and on the hearing of the application the court shall give such judgment as the plaintiff appears entitled to on the plaintiff's statement of claim.

19. Order 15 rule 16 of the GCR provides that no action or other proceeding shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the Court may make binding declarations of right whether or not any consequential relief is or could be claimed.

20. In respect of declaratory relief generally see *Financial Services Authority v Rourke* [2002] CP Rep 14 and the court's "unfettered" jurisdiction to make declarations. In *Rourke* Neuberger J as he then was stated:

> "It seems to me that, when considering whether to grant a declaration or not, the court should take into account justice to the claimant, justice to the defendant, whether the declaration would serve a useful purpose and whether there are any other special reasons why or why not the court should grant the declaration."

21. See also *HSBC Bank Plc, v Rondonia Transportes Cayman* [2019] EWHC 30 (Comm) at [81] simply quoting Neuberger J in *Rourke, Hayim v Couch* [2009] EWHC 1040 (Ch) at [12] and [17]

and *Wallersteiner v Moir* [1974] 1 WLR 991 which I will turn to in more detail shortly. Stephen Smith KC sitting as a Deputy Judge of the Chancery Division in *Hayim v Couch* at [12] stated:

> "… the court must proceed with caution when asked to grant declarations of right in cases where there has not been a trial."

22. At [17] the judge accepted that the rule that a court should not grant a declaration except after a trial was only ever a rule of practice and it should not be followed if following it would deny the claimant the fullest justice to which he is entitled.

23. Lord Reed in *Archer v Fabian Investments Limited* [2017] UKPC 9 at paragraph 17 stated:

> "… First, it was argued that since the defendants had not taken part in the appeal, the appellants were entitled to succeed by default. The case is however one in which the appellants seek a declaration that the shares are beneficially owned by the individual plaintiffs. In such a case, the court cannot make the order sought by default: it has to be satisfied that the order is one which it would be proper to make."

24. In "PD2 of 2024 – Explanatory Memorandum – Use of the Hong Kong White Book as an aid to the interpretation and application of the Grand Court Rules" published 5 March 2024 Chief Justice Margaret Ramsay-Hale at paragraph 10 encourages parties and practitioners before the Grand Court to consider reference to the editorial notes in *Hong Kong Civil Procedure*. At paragraph 11 it is made clear that the "notes contained in the current edition of Hong Kong Civil Procedure, or where appropriate earlier editions may [in addition to the Supreme Court Practice 1999 of England and Wales] also be used as an aid to the interpretation and application of the Rules where they are the same or similar to the Rules of the High Court in Hong Kong."

25. I have noted the commentary on Order 19 rule 7 of the Supreme Court Practice 1999 of England and Wales and also of Hong Kong Civil Procedure 2024.

26. In the English White Book 1999 commentary at 19/7/12 it is stated under the heading "Proof of plaintiff's case" –

> "At a meeting of the Judges, a majority decided that the Court cannot receive any evidence in cases hereunder, but must give judgment according to the pleadings alone (*Smith v Buchan* (1888) 58 L.T. 710; *Young v Thomas* [1892] 2 Ch 135, CA). It is therefore not necessary on the hearing of the summons or motion for judgment to prove the case by evidence (*Webster v Vincent* (1898) 77 L.T. 167) …"

27. At 19/7/14 it is added:

> "Discretion of the Court – Although para. (1) of the rule is expressed in mandatory terms, the rule is not mandatory but discretionary, and the Court retains its discretionary power whether to give judgment or to extend a party's time to plead when it is just to do so (*Wallersteiner v Moir* [1974] 1 W.L.R. 991; [1974] 3 ALL E.R. 217, CA) …"

28. At 19/7/15 it is stated:

> "Statement of claim must show right to relief – The statement of claim (or counterclaim) must, on motion or summons hereunder, show a case for the order the applicant seeks to obtain.
>
> On the other hand, it is not the practice of the Court to make a declaration of right in default of defence, or on admissions or by consent but where such relief is to be granted without trial or evidence, the right course for the Court is not to make a declaration but to state on what footing the relief is to be granted (*Wallersteiner v Moir* [1974] 1 W.L.R. 991; [1974] 3 ALL E.R. 217; *per* Buckley and Scarman L.JJ.).
>
> The rule of the Chancery Division that a declaration will not be granted when giving judgment by consent or without trial, *e.g.* where judgment is obtained in default of defence or notice of intention to defend, is a rule of practice and not of law and will give way to the paramount duty of the court to do the fullest justice to the plaintiff to which he is entitled (*Patten v. Burke Publishing Co. Ltd* [1991] 1 W.L.R. 541; [1991] 2 ALL E.R. 821.) …"

29. The English White Book 1999 commentary on Order 15 rule 16 in respect of declaratory judgments at 15/16/2 stresses that the power to make binding declarations of right is a discretionary power. It is added:

> "… If relief is to be granted without trial or evidence, the right course for the Court is not to make a declaration but to state on what footing relief is to be granted (*per* Buckley and Scarman L.JJ. in *Wallersteiner v Moir* [1974] 1 W.L.R. 921; [1974] 3 ALL E.R. 217). A declaration can only be made after proper argument and cannot be made merely on admissions by the parties whether in pleadings or otherwise … nor in default of compliance with rules of Court.
>
> On the other hand, the rule of the court that a declaration will not be granted when giving judgment by consent or default is a rule of practice and not a rule of law and will give way to the paramount duty of the court to do the fullest justice to the plaintiff to which he is entitled."

30. The commentary on Order 19 rule 7 in Hong Kong Civil Procedure 2024 repeats many of the points made in the English White Book 1999 commentary. At 19/7/20 of the Hong Kong commentary the following is added:

> "It is not the normal practice of the court to make a declaration without trial, particularly where the declaration is that the defendant in default of defence has acted fraudulently … However, this is only a rule of practice which should not be followed when the plaintiff had a genuine need for the declaratory relief and justice would not be done if such relief were denied … This rule of practice does permit limited exceptions …
>
> Where declaratory relief is sought, the court will scrutinize the application for default judgment carefully and does not hastily grant the relief sought; *Chau Yan Chi Caatherine v The Incorporated Owners of Fung Wah Factorial Building* (DCCJ 1459/2014, [2014] HKEC 1211 [14]; *Chan Wing Go v The Incorporated Owners of Wing Hong Factory Building* (DCCJ 1736/2014, [2014] HKEC 1649 [20]): both cases involving claim for declaratory relief of possessory title, and relief was granted in both cases.
>
> Where declaratory relief is sought, the court expects maximum assistance to be provided in order for the relief to be granted. However straightforward this kind of application may

seem, the court should not be expected to deal with the matter on a do-it-yourself basis and rubber-stamp the uncontested application without further ado …

The declaratory relief to be granted should not be in terms wider than what the plaintiffs are entitled to and what is necessary to do justice to them …"

31. Ms Carver helpfully referred me to *Chau Yan Chi Catherine v The Incorporated Owners of Fung Wah Factorial Building* DCCJ 1459/2014 [2014] H.K.E.C 1211. In that case, His Honour Judge Andrew Li on 22 July 2014 dealt with the applicable law at paragraphs 12-15 as follows:

> "12. I shall first consider the law relating O 19 r 7 of RDC [Rules of the District Court]. Simply put, the rule empowers the court to enter judgment as the plaintiff appears entitled to on his statement of claim, upon default of defence on the part of the defendant.
>
> 13. Two points are noteworthy. First, the court cannot receive any evidence and must give judgment according to the pleadings alone (see Hong Kong Civil Procedure 2014 Vol 1, §19/7/11). Second, the court's power to grant judgment is discretionary and not mandatory (*ibid* Vol 1, §19/7/13).
>
> 14. The court will scrutinize application for default judgment and does not hastily grant the relief sought. It is normal practice for the court of (sic) not to make a declaration without a trial, though the rule is not absolute and should be followed only where the claimant can obtain the fullest justice without such a declaration: *Patten v Burke Publishing Co Ltd* [1991] 2 All ER 821.
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> 15. In light of these principles, it becomes clear that a cautious approach is called for in the present case, for firstly the court has not had the benefit of taking evidence; secondly the relief sought is declaratory in nature; and thirdly the relief sought relates to a possessory title."

32. At paragraph 26 the following is added:

> "26. Notwithstanding the cautious approach I have adopted in this case, I am satisfied that the plaintiff has established a claim of adverse possession on the face of the amended statement of claim, which is self-contained and is sufficient to displace the norm not to make a declaration without trial."

33. *Wallersteiner v Moir* [1974] 1 WLR 991, an English Court of Appeal case, is famous for Lord Denning's robust attitude to piercing the corporate veil or as Mr Lincoln for Dr Wallersteiner would have it "sending it up in flames" (page 1613 E). Lord Denning felt that certain companies were the puppets of Dr Wallersteiner: "He controlled their every movement. Each danced to his bidding. He pulled the strings." In the present context I note Buckley LJ's comments at page 1029 to "a practice of very long standing, that the court does not make declarations of right either on admissions or in default of pleading … Where relief is to be granted without trial, … it is necessary to make clear upon what footing the relief is to be granted, the right course, in my opinion, is not to make a declaration but to state that the relief shall be upon such and such a footing without any declaration to the effect that that footing in fact reflects the legal situation." Scarman LJ at 1030 referred to the discretion of the court as follows:

> "Rule 7 makes provision for all other descriptions of claim (of which claims for declaratory relief are one). R.S.C., Ord. 19, r. 7 (1) provides that in all such cases the consequence of a failure to serve a defence within the proper time shall be that the claimant "may … apply to the court for judgment, and … the court shall give such judgment as [he] appears entitled to on his statement of claim." Notwithstanding the word "shall," the case law has established that the court retains the right to refuse the claimant judgment even when upon his pleading he appears entitled to it. If the court "should see any reason to doubt whether injustice may not be done by giving judgment," it may refuse judgment at this stage: *Charles v. Shepherd* [1892] 2 Q.B. 622, 624, *per* Lord Esher M.R.
>
> This discretion is a valuable safeguard in the hands of the court. Take the instant case: though I entertain grave doubts as to the bona fides and honesty of Dr. Wallersteiner both in the financial dealings the court is now considering and in the conduct of this litigation, injustice might well be done to him if without the benefit of trial the court should declare him fraudulent, guilty of misfeasance and of breach of trust. For the very reason that the case reeks of the odour of suspicion, it is, I believe, the duty of the court to exercise caution

> before committing itself to sweeping declarations: to look specifically at each claim, and to refrain from making declarations, unless justice to the claimant can only be met by so doing. Generally speaking, the court should leave until after trial the decision whether or not to grant declaratory relief, and if so, in what terms: see *Williams v. Powell* [1894] W.N. 141.
>
> Different considerations, however, apply when what is sought is a money or property judgment. When a defendant fails to plead, it is ordinarily in the interests of justice that the plaintiff should be able without more ado to obtain judgment for the money or property for which he is suing; the defendant is not without remedy after judgment in default, for, if he can show a bona fide defence, he can get it set aside before it is enforced. But, when what is sought is a declaration, there is the risk of irremediable injustice: the court has spoken and words cannot be recalled, even though later they be negatived; "nescit vox missa reverti," Horace, *Ars Poetica*, line 390. The power of the court to give declaratory relief upon a default of pleading, of course, exists, but, for the reason crystallised by Horace in those four words of his, should be exercised only in cases in which to deny it would be to impose injustice upon the claimant.
>
> This approach lends me to the conclusion that the declaratory relief contained in the minute of judgment annexed to the order of Geoffrey Lane J. should be disallowed at this stage."

Determination

34. The present application only concerns the First Defendant who has failed to file a defence within the requisite time period or at all. The Second and Third Defendants have also failed to serve defences but no relief is claimed against them in the Summons.

35. At paragraph 47 of the Amended Statement of Claim the Plaintiffs plead that the Property represents the traceable proceeds from the Proceeds of Sale and as such the First Defendant holds the Property on constructive trust for the First Plaintiff and the First Plaintiff seeks an order that the Property be transferred to the First Plaintiff. At paragraph 2A on the last page of the Amended Statement of Claim the following relief is sought:

> "An order that the Property be transferred to CSL [the First Plaintiff]."

36. The Plaintiffs, in the draft Order they have submitted to the court, seek the following orders:

> "1. The Court does declare that the First Defendant holds he Property known as 24 Shamrock Road, Grand Cayman, Block 23B, Parcel 3, registration section Prospect (the "Property") on trust for the First Plaintiff.
>
> 2. The Property be transferred to the First Plaintiff forthwith.
>
> 3. The First Defendant shall, within seven days of service of this order, execute all necessary paperwork and provide all required documentation to ensure the transfer of the Property to the First Plaintiff, including three copies of the RL1 Transfer of Land form.
>
> 4. In the event that the First Defendant fails to comply with paragraph 3 of this order, the Clerk of the Court shall sign all such paperwork on behalf of the First Defendant.
>
> 5. The First Defendant does pay the Plaintiffs' costs of this application, to be taxed on the standard basis if not agreed."

37. Nowhere in the Amended Statement of Claim is there a request for a declaration as sought at paragraph 1 of the draft Order submitted by the Plaintiffs. I am not content to grant the declaration requested. I do not grant the Order sought at paragraph 1 of the draft Order.

38. I am however willing on the basis of the lack of defence and on the evidence before the court establishing that the First Defendant holds the Property on trust for the First Plaintiff to make orders in terms of paragraphs 2, 3 (albeit providing for 14 days rather than seven days) and 4 of the draft Order.

39. In respect of the reference to RL1 Transfer of Land form Ms Carver helpfully referred me to rule 4 of the Registered Land Rules (2018 Revision) together with the Third Schedule.

40. I am also content to make an order for costs in terms of paragraph 5 of the draft Order.

41. In respect of the relief claimed at paragraph 4 of the draft Order counsel helpfully brought to my attention, in additional written submissions dated 25 November 2024, Section 11 of the Grand Court Act (2015 Revision), section 39 of the Senior Courts Act 1981 of England and Wales (execution of instrument by person nominated by High Court) and *Johnson v Johnson* KY 1990 GC 56 a judgment of Harre J delivered on 28 September 1990 where the Grand Court ordered that "The Clerk of the Courts be authorised and instructed to execute on behalf of the Respondent land transfer forms …". I am satisfied that the Grand Court has jurisdiction to grant the order requested at paragraph 4 of the draft Order.

42. I am satisfied that to do "the fullest justice" to the First Plaintiff orders in terms of paragraphs 2 and 3 are proper and appropriate. They are also fully justified on the basis of the lack of defence to the Amended Statement of Claim and on the evidence before the court. It appears on the Plaintiffs' Amended Statement of Claim that the First Plaintiff is entitled to relief claimed in these paragraphs.

43. The undefended pleading at paragraph 40(a) and (b) reads:

> "(a) on 27 April 2020 US$15,092,800, being part of the Proceeds of Sale was transferred from CSL's account number 4HI0159B at Hampton Securities to CG's Account with CIBC;
>
> (b) on 8 May 2020 Ms. Winczura purchased a residential property at 24 Shamrock Road Cayman Islands (the "Property") for US$2.4 million with funds from CG's accounts with banks and brokers which derived from Proceeds of Sale."

Nothing turns on this but, as will be seen below, the evidence actually refers to the date of purchase as 26 May 2020.

44. In the particular circumstances of this case, I have carefully considered the first affidavit of Karen Scott, one of the joint official liquidators of the First Plaintiff, sworn on 23 April 2024. I note in particular the heading "Tracing of share sale proceeds" and paragraphs 42 to 44 and the heading

"Commingling and personal use of funds" and paragraphs 45 to 55. I note also the underlying evidence in KS1 and the ITG Account 2020 entry "May 20 WIRE TO CIBC USA $2,400,000.00". I also note the CIBC Cayman Account entries on 21 May 2020 of US$1,999,955.08 and US$399,955.08. Karen Scott at paragraph 51 of her first affidavit states:

> "51. On 20 May 2020 $2.4m was wired from ITG to CG CIBC USA [984]. On 21 May 2020 there are two receipts into CG's CIBC Cayman account in the sums of $1,999,955.08 and $399,955.08 [570]. The source of these funds is not specified, but the timing and amount suggests that these payments represent the same funds being moved from ITG to CG's Cayman account via the US account. On 22 May 2020 CG paid $2,206,533.20 [570] to George Bullmore who was the vendor of the property at 24 Shamrock Road which was purchased by Ms Winczura on 26 May 2020. In other words, Ms Winczura's personal residence was paid for out of CSL funds."

Orders

45. It is in these circumstances that I feel able to make and do make the following orders:

1. 24 Shamrock Road, Grand Cayman, Block 23B, Parcel 3, registration section Prospect (the "Property") be transferred by the First Defendant to the First Plaintiff forthwith.

2. The First Defendant shall, within 14 days of service of this Order, execute all necessary paperwork and provide all required documentation to ensure the transfer of the Property to the First Plaintiff, including three copies of the RL1 Transfer of Land form.

3. In the event that the First Defendant fails to comply with paragraph 2 of this Order, the Clerk of the Court shall sign all such paperwork on behalf of the First Defendant.

4. The First Defendant does pay the Plaintiffs' costs of the summons dated 18 October 2024, to be taxed on the standard basis if not agreed.

46. I also make an order varying the injunction granted on 26 April 2024 to permit the transfer of the Property to the First Plaintiff.

47. Counsel to email my PA updated draft Orders forthwith.

David Doyle

THE HON. JUSTICE DAVID DOYLE
JUDGE OF THE GRAND COURT