CICA 2/2014
(G 606 of 2008)

IN THE COURT OF APPEAL OF THE CAYMAN ISLANDS
ON APPEAL FROM THE GRAND COURT
(Justice Quin)

BEFORE

The Rt Hon Sir John Chadwick, President
The Rt Hon Sir Anthony Campbell, Justice of Appeal
The Hon John Martin, Justice of Appeal

BETWEEN

(1) CHUAN PU WANG
(2) CHIA HSING WANG
(3) PAULINE SHIU JUN YEH WANG
Appellants/Interveners

-and-

STRATEGIC TECHNOLOGIES PTE LTD
Respondent/Judgment Creditor

-and-

THE ARMAMENTS BUREAU OF THE MINISTY OF NATIONAL DEFENCE OF THE REPUBLIC OF CHINA
Respondent/Judgment Debtor

Mr Thomas Lowe QC instructed by Mr David Butler and Ms Jessica Williams of Harney Westwood & Reigels appeared for the Appellants, Chuan Pu Wang, Chia Hsing Wang and Pauline Shiu Jun Yeh Wang

Mr Antonio Bueno QC instructed by Mr Colm Flanagan and Mr Stephen Barrie of Nelson & Company appeared for the Respondent, Strategic Technologies Pte Ltd

The Armaments Bureau of the Ministry of National Defence of the Republic of China was not represented and did not appear on the appeal

Hearing: 2 April 2014
Reasons released: 16 April 2014

REASONS FOR JUDGMENT

Sir John Chadwick, President:

1. This is an appeal from an order made on 2 August 2013 by Justice Quin in proceedings brought by Strategic Technologies Pte Ltd ("STPL") against The Armaments Bureau of the Ministry of National Defence of the Republic of China (MOND") (as successor to The Procurement Bureau of the Republic of China Ministry of National Defence.

2. Those proceedings were commenced by the issue of a writ (under reference G606/2008) on 29 December 2008. The appellants, Chang Pu Wang, Chia Hsing Wang and Pauline Shiu Jun Yeh Wang (together "the Wangs") were not parties to those proceedings. The claim in the writ was for payment by MOND to STPL of sums due under a judgment obtained by STPL against MOND in the High Court of Singapore on 9 December 2002.

3. On the following day, 30 December 2008, Justice Quin made a freezing order prohibiting MOND from disposing of its assets in the Cayman Islands up to the value of US$ 3 million. He also gave leave to serve the writ on MOND wherever it might be found in Taiwan, in the Republic of China.

4. On 25 June 2009, MOND having failed to file notice of intention to defend the proceedings, STPL obtained default judgment in the Grand Court (i) in the principal sum of US$ 1,573,510.40 with pre-judgment interest on that sum amounting to US$ 1,039,920.96 and post-judgment interest at the rate of 6% *per annum* (equivalent to US$ 258.88 *per diem*), (ii) in the further principal sum of Singapore $ 10,693.00 with pre-judgment interest on that sum amounting to Singapore $ 7,069.92 and post-judgment interest at the rate of 6% *per annum* (Singapore $ 1.76 *per diem*), and (iii) in the further sum of Singapore $ 7,425 on account of fixed costs and disbursements under the judgment of 9 December 2002 of the High Court of Singapore. The Court made an order that STPL should have its costs of the proceedings (which it assessed at US$ 7,300.00) together with court fees of US$ 10,263.07. It extended the freezing order made on 30 December 2008 until satisfaction of the judgment or further order of the Court.

5. On 13 January 2012 Justice Quin made an order (a charging order: notice to show cause) directing that unless sufficient cause to the contrary was shown at a hearing

before the Grand Court on 4 May 2012, MOND's interest in the asset specified in the schedule should, and in the meantime would, stand charged with payment of the sum of US$ 3,416,557.43 due under the default judgment of 25 June 2009, with interest thereon at 6% *per annum*. The specified asset was "The Defendants beneficial interest in the sum of approximately US$ 48,000,000.00 held in Court in Grand Court Cause CJICL12 of 2006 including any interest payments in relation thereto. By an amendment, made on 20 January 2012 that description of the specified asset was amended by the addition of the words "and/or Grand Court Cause PACL (*sic*) 15/2009".

6. In making that order the judge relied, both in respect of the amount said to be due under the default judgment of 25 June 2009 and in respect of the contention that the defendant (MOND) had a beneficial interest in the monies held in Court in Grand Court Cause CJICL 12 of 2006, on the affidavit of Steven Barrie, a partner in the firm of Nelson & Co (attorneys representing STPL in these proceedings), sworn on 20 September 2011. Mr Barrie's affidavit referred to, and adopted (so far as material) (i) an earlier affidavit sworn by John Smith, a director of Commercial Intelligence S.E. Asia Pte Ltd (a company based in Singapore), on 12 December 2008 in support of the application for a freezing order and (ii) an affidavit of Lisa-Ann Welman, a secretary and receptionist employed by Nelson & Co, sworn on 24 June 2009, shortly before the default judgment was obtained on 25 June 2009. Mr Smith's affidavit contains the statement (at paragraph 14) that: "It has come to the Plaintiff's knowledge that certain funds have been frozen within the jurisdiction of this [the Cayman] Court, which are the subject of claims by the Taiwanese Government". Ms Welman's affidavit contains the following statement (at paragraphs 10 and 11):

> "I am advised by Mr Keeble [an attorney with Nelson & Co] that . . . it appears that at the behest of the Swiss anti-money laundering authorities, the Attorney General of the Cayman Islands has frozen monies in accounts at Bank Vontobel Cayman . . .".
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> I am advised by Mr Keeble that the monies frozen in this fashion within the Cayman Islands are claimed by the Government of Taiwan/Republic of China and as the proceeds of crime, corruption and bribery. . . ."

7. The monies to which Mr Smith and Ms Welman referred in their affidavits were the subject to a restraint order made by Justice Quin in the Grand Court on 19 October 2006 in Cause CJICL 12/06 on the application of the Attorney General pursuant to

section 24 of the Criminal Justice (International Cooperation) Law (2004 Revision) pursuant to a request by the Examining Magistrate of Switzerland in proceedings "MPC against Chang Pu (Andrew) Wang and others. The order restrains the disposal of funds held on account No VBTC100 055 in the name of Chai (*sic*) Hsing (Bruno) Wang at Bank Vontobel AG, Grand Cayman and "all accounts regarding Chang Pu (Andrew) Wang and/or Chai Hsing (Bruno) Wang or as appear to be holders or beneficial owners and/or holders of powers of attorney with the Bank Vontobel AG, Grand Cayman".

8. On 24 November 2009 Chia Hsing Wang (Bruno Wang) swore an affidavit in Cause CJICL 12/06 in support of an application for an order discharging the restraint order made on 19 October 2006. Bruno Wang is the son of Chang Pu Wang (Andrew Wang) and Pauline Shiu Jun Yeh Wang (Pauline Wang). In the course of that affidavit he explained the circumstances in which criminal proceedings had been instituted in Switzerland against himself, his father and his mother. He stated (at paragraph 22 of that affidavit) that those criminal proceedings in Switzerland were finally and conclusively terminated on 30 October 2008, that no member of the family was indicted, that, on 17 December 2008 the Swiss Attorney General formally closed the proceedings and that, as a result, the Swiss Examining Magistrate had "abandoned his request to freeze the family's assets abroad including the assets held by the Bank here in Grand Cayman".

9. At paragraph 64 of his affidavit Bruno Wang referred to allegations, summarized in an affidavit sworn by Gail Johnson-Goring on 19 October 2006 in support of the Attorney General's application for the freezing order, of an illicit commission of several hundreds of millions of US dollars paid by Thomson –CSF (a French defence procurement company) to his father (Andrew Wang) in connection with the acquisition of six Lafayette class frigates sold to Taiwan for a price in excess of US$2.5 billion.. He said this:

> "The remuneration which my father received was entirely legitimate, based on a legally binding agreement between Cathay Enterprise (owned by my father) and Thomson-CSF. The remuneration was also approved by the French Government (including the French Ministry of Defence) and guaranteed by DCN, part of the French Ministry of Defence. The repeated use of the phrases of 'illicit commission' and 'incriminated arms contract' by the Swiss Examining Magistrate and [Ms Johnson-Goring] are wrong and misleading."

He went on, at paragraphs 65 to 74 of his affidavit, to set out in some detail the circumstances which, as he said, led to his father becoming entitled to receive commission on the sale of the frigates by France to Taiwan.

10. The application to discharge the freezing order was supported by the Attorney General and Bank Vontobel; and was successful. An order discharging the freezing order was made by the Chief Justice on 25 November 2009. But, shortly thereafter, on 4 December 2009, in Cause POCL 15/2009 the Chief Justice made an order, on the application of the Attorney General, requiring Bank Vontobel to pay into Court all realisable property which it held for the benefit of the Wangs; and, in particular, monies held on account VBTC 020 055 in the names of Bruno Wang and Pauline Wang and on any subsequent account into which the proceeds of account VBTC 020 055 were transferred.

11. The circumstances in which the order of 4 December 2009 was obtained appear from a Note prepared by Ms Elizabeth Lees, counsel on behalf of the Director of Public Prosecutions, in or about July 2013 in the context of an application by the Crown to discharge that order. It is stated, at paragraph 1 of the Note:

> "A restraint was obtained under the Criminal Justice International Cooperation Law on 19th October 2006. This was following a request from Switzerland. On 25th November 2009 following an intention (*sic*) to discharge this order, based on further correspondence from the Swiss authorities an affidavit was received from Bruno Wang. Due to the items disclosed in that affidavit the Financial Reporting Authority applied under s4 of POCL 2008 for the relevant accounts to be frozen for a period of 21 days to allow further investigation. On 4th December 2009 a restraint order was granted following an application by the Crown for a POCL restraint. . . . A money laundering investigation was commenced by the Financial Crime Unit of the Cayman Islands."

The Note goes on to explain that "due to the fact that no assistance has been forthcoming from Taiwan in relation to the criminal investigation the Crown must request that the restraint order is discharged". Effect was given to that request by an order made by Justice Quin on 26 July 2012. Nevertheless, he ordered that the funds which had been paid into Court pursuant to the order of 4 December 2009 – in so far as subject to the charging order which he had made on 13 January 2012 (as subsequently re-amended by an order made on 22 June 2012) should remain in Court until further order.

12. As I have said, in making the charging order (notice to show cause) on 13 January 2012, the judge had relied on the affidavit sworn by Mr Barrie on 20 September 2011. In that affidavit Mr Barrie had said this (at paragraphs 6, 7 and 8, in a section headed "Origins of the funds in the Wang-controlled accounts"):

> "6. It now appears that the Wang-controlled accounts were not related to misappropriations of campaign funds by the former president of Taiwan, as Strategic originally believed, but derived from a contract entered into in 1991 by the French defence contractor Thales S.A. and Thales Naval France S.A. (TNF) (or their precursor, Thomson - CSF) for the construction of six Layfayette (*sic*) class frigates to MOND for the Taiwanese navy. This sale was achieved in breach of the procurement contract which stipulated that no commissions were to be paid for the deal. In the event, it has been determined in a very highly published arbitration between Thales and the Republic of China (Taiwan) that US$ 861 million (inclusive of interest and costs) must be paid by Thales. The essential basis of the award is to the effect that the so-called commissions were in fact bribes and kickbacks.
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> 7. Thomson-CSF's (MOND's) agent in Taiwan at the relevant times was Andrew Wang who, when matters started to come to light, fled the country. It has been widely publicised that it was he who largely orchestrated the fraud and that he was personally the beneficiary of very substantial sums. It is understood that about US$ 526 million found its way into various Swiss banks and it is from these accounts that the monies frozen in Cayman derive. The publicity given to these matters, both over the internet and otherwise in the media, has been enormous and I believe that the position, as I have summarized it, cannot be gainsaid. For completeness, it is understood that the arbitration proceedings are definitively concluded.
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> 8. Bruno Wang is the son of Andrew Wang and, in support of his application to discharge the Freezing Order, he swore an affidavit stating that the funds came from his father and were the product of the Lafayette deal. Thus, on the face of it, there are monies to which the Government of Taiwan can lay claim as the true beneficial owner, on the principles identified in AG for Hong Kong v Reid ([1994] 1 AC 324). Having regard to the findings in the arbitration proceedings in its favour, the position would appear to be very clear."

The affidavit concluded with this statement:

> ". . . The application is made pursuant to Order 50 r.1(2) of the Grand Court Rules, which enables a judgment creditor to apply for a charging order in respect of a judgment debtor's beneficial interest in any property. For the reasons I have given, I respectfully contend that this must extent to monies impressed with a constructive trust, as in this case."

13. The charging order (notice to show cause) made on 13 January 2012 was made on the basis that cause why a charging order absolute should not be made would be shown (if

at all) at a hearing on 4 May 2012. On 23 March 2012 Mr Barrie made a further affidavit (his second) in support of an application for leave to inspect and take copies of "the affidavit(s) of Bruno Wang and any other material in the Court files relating to the proceedings in the Grand Court Cause No PACL (*sic*) 15 of 2009 and/or Grand Cause CJICL 12 of 2006". Confusingly, that affidavit was made and filed in Cause 58 of 2008 and was entitled "In the Matter of an ex parte application by Standard Chartered Bank for leave to inspect and take copies of the Court file in Grand Court Cause 359 of 2010 (FSD 54 of 2009)". In the course of that affidavit Mr Barrie rehearsed the allegations made in paragraphs 6, 7 and 8 of his first affidavit. He confirmed that the application for a charging order was based upon the principles identified in AG for Hong Kong v Reid "namely, that bribes (or their equivalent) accepted in breach of a fiduciary duty are imposed with a constructive trust in favour of the party to whom the duty is owed". He went on, at paragraph 11 of his second affidavit to say this:

> ". . . It has come to my and Stratech's [STPL's] knowledge that Bruno Wang, the son of Andrew Wang, in support of an application to discharge the Freezing Order obtained in the Proceedings, swore at least one affidavit stating that the funds came from his father and were derived from those illegal commissions. This information was provided to my firm by the Attorney Generals' Department. Assuming this to be correct, on the face of it such affidavit would provide clear and unequivocal evidence that there are monies to which the Government of Taiwan, and thus MOND, can lay claim as the true beneficial owner, on the principles identified in AG for Hong Kong v Reid and thus which Stratech is entitled to attach by way of charging order to execute its judgment against MOND."

And he observed, at paragraph 13, that "the Court will have to consider the contents of all this material when deciding whether to make a charging order absolute when the matter is again before it 4 May 2012 and cannot do so without also making this available to Stratech".

14. On 13 April 2012 Mr Barrie made a further affidavit (his third) in support of STPL's application for leave to inspect and take copies of the affidavit(s) of Bruno Wang and any other material in the Court files relating to the proceedings in Cause No POCL 15 of 2009 and/or Grand Cause CJICL 12 of 2006, which were said to be relevant to the steps being taken to enforce its judgment against the Defendant in Grand Court Cause No. 58 of 2008 (*sic*). At paragraph 6 of that affidavit Mr Barrie stated:

> "Notice of the hearing to show cause in respect of Stratech's application for a Charging Order Absolute which was fixed for 4 May 2012 has been served upon the Attorney General, The Procurement Bureau [meaning MOND] and the Attorneys who Stratech understands were acting for Bruno Wang. To date the only party who has responded in any way to this application is the Attorney General. It would appear that the other parties have ignored Stratech's correspondence do not intend to take an active part in these proceedings."

15. It is clear from Mr Barrie's second and third affidavits that he did not then have – and had not had, at the time when he made his first affidavit – a copy of Bruno Wang's affidavit of 24 November 2009. If he had had a copy of that affidavit, he could not have asserted in his first affidavit (in the paragraph 7, set out above) that he believed that the position, as he had summarised it, "cannot be gainsaid". It may well be that Bruno Wang's account of the circumstances in which his father had become entitled to commission in respect of the sale of the Lafayette frigates is not accepted on behalf of STPL; but that there was a serious issue to be determined in that context had to be recognized. There is nothing to suggest that the judge was made aware of that when he made his order on 13 January 2012.

16. On 17 April 2012, the judge ordered that the application for leave to inspect and take copies of the affidavits sworn in Cause CJIC 12/2006 and/or Cause POCL 15/2009 be served on the Attorney General and on the law firm of "Charles Adams Ritchie Duckworth who appeared in those matters [on behalf of the Wangs]". It is pertinent to keep in mind that the Wangs were not parties to Cause 606 of 2008; and there were no legal representatives on the record for them in these proceedings. He ordered that the application be adjourned to 24 April 2012.

17. On 17 April 2012 notice of the application for leave to inspect, which was to be made on 24 April 2012, together with supporting affidavits, was sent to Charles Adams Ritchie & Duckworth ("CARD"), pursuant to the direction made by the judge on that day. On 19 April 2012 those documents – together with documents in connection with the application for a charging order which had been delivered to their offices on 25 January and 15 February 2012 – were returned by CARD to Nelson & Company under cover of letters which stated that CARD had not been instructed and was not (and had not been) on the record for any party in Cause No 606 of 2008; and that

CARD were unable to accept service of those documents. Nelson & Co replied on the same day (19 April 2012) in a letter which contained these paragraphs:

> "We appreciate that your firm is not involved or instructed in the above entitled action [Cause No 606 of 2008] however as the cover letters to our respective correspondence make clear we understand your firm may act for parties who held funds in the Cayman Islands to which the Government of the Republic of China lay claim and which are the subject of asset recovery proceedings in Grand Court Cause CJICL 12 of 2006 and/or POCL 15/2009.
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> As we set out in our correspondence our client's various applications in Grand Court Cause 606 of 2008 relate to the interests of the parties to Grand Court Causes CJICL 12 of 2006 and POCL 15/2009 including those parties represented by your firm and it is on that basis that we have served you with notice of these various proceedings."

18. When the application for leave to inspect came before the judge on 24 April 2012, he took the opportunity to direct that the charging order (notice to show cause) which he had made on 13 January 2012 – which was then listed for hearing on 4 May 2012 – be adjourned to a date to be agreed between STPL and the Attorney General. He directed that the re-listed charging order be served on MOND and on CARD. He directed that a copy of the affidavit sworn by Bruno Wang on 24 November 2009 be placed on the Court file in a sealed envelope; and that a named partner in Nelson & Co (not Mr Barrie) be permitted to inspect a copy of that affidavit at the Chambers of the Attorney General in the presence of Crown Counsel, Ms Lees.

19. On 22 June 2012 the charging order (notice to show cause) was re-amended to substitute 23 October for 4 May 2012 as the date of the hearing to show cause. On 25 June 2012 Nelson & Co wrote to CARD in these terms:

> ". . . in accordance with Order 50 of the Grand Court Rules we enclose herewith a copy of a Re-Amended Charging Order: Notice to Show Cause, returnable for 23 October 2012 by way of service upon you."

20. The date of the hearing was further postponed, to 16 April 2013, by an order of 13 March 2013; and postponed, yet again, first to 30 April 2013, by an order of 16 April 2013 and, subsequently, to 2 August 2013. Some indication of the reasons for these adjournments can be found in the Note prepared by Crown Counsel, Ms Lees, to which I have already referred.

21. As I have said, on 26 July 2013 the freezing order which had been made by the Chief Justice on 4 December 2009 was discharged on the application of the Director of

Public Prosecutions. Following the hearing, Nelson & Co wrote to CARD enclosing "a bundle comprising the various documents relied upon before the court and the various orders made by the court in these proceedings". So far as appears from the material in the bundle before this Court, that was the first time a copy of the judge's order of 24 April 2012 – directing service of the relisted charging order on CARD had been sent to that firm.

22. Although (as I have said) Justice Quin, in discharging the restraint order, directed that the funds subject to the charging order which he had made on 13 January 2012 (and re-amended on 22 June 2012) should remain in Court until further order, he also directed that the balance of the funds should be returned "to its owner" within 28 days. The effect was that those funds became available to the Wangs to fund representation in these proceedings.

23. When the charging order came before the judge on 2 August 2013, at the hearing to show cause why it should not be made absolute, the Wangs were represented by attorneys, Harney Westwood & Reigels, who – it appears – had only recently been instructed in the matter. Counsel (Mr Jason Wood) explained to the judge that, although CARD had appeared for the Wangs from time to time in the CJICL and POCL proceedings, they had taken the view that there were no steps that that firm could take in these proceedings (Cause 606/2008) while the restraint order of 4 December remained in place. On the discharge of that order on 26 July 2013 it was said that the position had altered and that the Wangs had instructed his firm, Harneys, to apply for an adjournment of the hearing. Implicit in that application, I think, although not stated in express terms in the *ex tempore* Ruling in which the judge set out his reasons for refusing the adjournment, was the submission that Harneys needed an adjournment in order to read and consider the papers.

24. The application to adjourn the hearing on 2 August 2013 was opposed by counsel for STPL and by counsel for MOND. It was said on behalf of STPL that many of the Court documents had been served on the Wangs. It was said on behalf of MOND that the Wangs had had some four years to apply to discharge the order of 4 December 2009; but had not chosen to do so; and had put forward no good reason why they had not intervened at an earlier stage. The judge for the reasons set out in his Ruling, to which I have referred refused the adjournment sought. He said this:

> "I find that if I were to grant the interested parties [the Wangs] their application for an adjournment it would cause significant prejudice and further delay to the plaintiff [STPL]. I find that the Wangs have been largely responsible for the position in which they have found themselves today and there is no evidence that they have taken any steps to intervene in these proceedings at any stage until this morning.
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> In the light of the overall justice of the case and the prejudice that would be suffered by, primarily, the Plaintiff, but also by the Defendant [MOND], I reject the application by the Interested Parties for an adjournment and I order that the Plaintiff's application for a Charging Order Nisi to be made Absolute be continued and heard today."

The judge having refused the adjournment which he had sought on behalf of the Wangs, Mr Wood withdrew and Harneys took no further part in the hearing on 2 August 2013.

25. The hearing on 2 August 2012 continued in the absence of the Wangs or anyone representing them. The only record of what then took place that has been made available to this Court is a short contemporary note prepared by Nelson & Co. We were not told whether that note had been made available to the judge for approval. So far as material it is in these terms:

> "The judge outlined that he had read all the papers before him including the affidavits of Lisa-Ann Welman, John Smith, Steven [Barrie] and Bruno Wang filed in POCL 2009/15.
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> No objections/Cause raised by the Defendants
>
> Having made the Order Nisi and in the absence of any cause being shown as to why the order should not be made absolute the Judge indicated that he had no difficulty with and was prepared to make the charging order absolute and ordered that the funds paid into court pursuant to the order of the Chief Justice in POCL 15/2009 stand charged with the payment of US$3,246,571.35 and Singapore Dollars $27,741.70 and that he would order that these sums be paid out of the funds presently held in Court to Nelson & Co, the Plaintiff's attorneys."

26. The Order made by the judge on 2 August 2013, and filed on 9 August 2013, was in these terms:

> "Upon hearing Counsel for the Plaintiff and Counsel for the Defendant upon the Charging Order Notice to Show Cause re-amended on 22 June 2012 ('the Charging Order');
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> And upon reading the affidavits of Lisa-Ann Welman sworn 24 June 2009, John Smith sworn 29 December 2008 and Steven Barrie sworn 20 September 2011, 23 March 2012 and 13 April 2013 and reading the documents marked as read on the Court file;

And upon the Court having released seized funds on the application of the Director of Public Prosecutions of the Cayman Island in Cause 15/2009 ('the Funds') subject to the Charging Order;

It is hereby ordered :-

1. That the interest of the Defendant in the asset specified in the schedule hereto stand charged with the payment of US$3,246,571.35 and SGD$27,741.70 (Singapore Dollars), the amounts due from the Defendant to the Plaintiff, inclusive of costs and interest, on a judgment dated the 30th June 2009.
2. That the sums described in paragraph 1 above be paid out of the Funds which were paid into Court pursuant to the Order of the Chief Justice, dated 4 December 2009, to the Plaintiff's attorneys, Nelson & Company.

Dated, etc

Schedule

[1] The Defendants's beneficial interest in funds in the sum of approximately US$ 48,000,000 held in Court Grand Court Cause POCL 15/2009 pursuant to an order of the Chief Justice dated 4 December 2009, including any interest payments in relation thereto."

It can be seen that the Order, as filed and entered, is inconsistent with the Note of the hearing prepared by Nelson & Company in two respects: (i) there is no recital in the order to the effect that the judge read the affidavit of Bruno Wang; and (ii) the order does not charge "the funds paid into Court, etc . . . " with payment of the amount of the judgment debt due from MOND to STPL; it charges "the Defendant's beneficial interest" in those funds with payment of the judgment debt.

27. On 7 August 2013 MOND commenced proceedings in the Grand Court (under reference 276/2013) against the Wangs seeking a declaration that MOND had a beneficial interest in funds formerly held in accounts at Bank Vontobel owned and/or controlled by the Wangs in the sum of approximately US$ 48 million which were paid into Court in Grand Court Cause POCL 15/2009 pursuant to the order of the Chief Justice dated 4 December 2009, including any interest payments accrued in relation thereto; and an order that the whole of those assets be distributed to MOND (less the amount paid to STPL pursuant to the order made by Justice Quin on 2 August 2013 in these proceedings).

28. Also on 7 August 2014 the Wangs applied to Justice Quin for leave to intervene in these proceedings and for an order (i) that the order of 2 August 2013 be varied or, in the alternative, that they have leave to appeal from that order. Those applications were

heard by the judge on 12 August 2013. In a short *ex tempore* Ruling delivered on that day the judge dismissed those applications. He said this:

> "The Court cannot allow a party who has had Cayman Islands attorneys instructed and acting for years in Grand Court Cause Numbers G 606 of 2008 and POCL 15 of 2009, to intervene after the Court has made its decision. There must be certainty and finality. Any application of this nature after the Court has made a Charging Order absolute would cause great prejudice, delay and cost to the Plaintiff and probably the Defendant.
>
> The Wangs have only themselves to blame for not having instructed their attorneys to intervene at a much earlier stage in the proceedings."

And he went on:

> As I made my decision on the 2nd August 2013 I am now functus officio. In addition, as the Wangs are not parties to these proceedings, I have no jurisdiction to grant them leave to appeal."

It is difficult to understand why the judge thought that the Wangs had had attorneys instructed and acting for them in Cause 606 of 2008. They were not parties to those proceedings; and there is nothing in the material before this Court to support the view that CARD, or any other attorneys, were instructed to act on their behalf in those proceedings prior to the time at which Harneys were retained in late July 2013. As I have explained CARD had informed Nelson & Co in April 2012 that they were not instructed by the Wangs in Cause 606 of 2008.

29. On 14 August 2013 the Wangs applied to this Court, pursuant to Rule 21A of the Court of Appeal Rules, for leave to appeal from paragraph 2 of the Order made on 2 August 2013. Permission was granted on 4 November 2013. The Certificate of the Order of this Court granting leave to appeal and staying the release of funds pursuant to paragraph 2 of the order of 2 August 2013 until determination of the appeal was entered on 31 December 2013. Notice of Appeal was filed on 8 January 2014. The Order sought on this appeal, as appears from that Notice, is in these terms (so far as material): (i) that the order that funds in Court be released be set aside and (ii) that the question as to the entitlement to the funds in Court (as between the Wangs and MOND) be determined in Grand Court Cause 276 of 2013.

30. The appeal was heard by this Court on 2 April 2013. At the conclusion of the oral hearing the Court indicated that it would allow the appeal and set aside paragraph 2 of the order of 2 August 2013; for reasons that it would put in writing and deliver as soon as convenient.

31. Having already set out the circumstances which led to the order of 2 August 2013 in some detail, my reasons for concluding that the judge was wrong to direct, in paragraph 2 of that order, that the sums of US$3,246,571.35 and SGD$27,741.70 be paid out of the funds in Court to Nelson & Company, as attorneys for MOND, can be stated shortly.

32. Order 50 rule 1(2) of the Grand Court Rules provides that an application by a judgment creditor for a charging order in respect of the judgment debtor's beneficial interest in any property may be made by an ex parte originating motion, and any order made on such an application shall in the first instance be an order to show cause, specifying the time and place for further consideration of the matter and imposing the charge in any event until that time. Rule 2(1) requires that, on the making of an order to show cause, notice of the order shall be served on the judgment debtor; and, where the order relates to an interest under a trust, copies of the order shall be served on such of the trustees as the Court may direct. Rule 2(2) provides that, without prejudice to rule 2(1), the Court may, on the making of the order to show cause, direct the service of copies of the order, and of any affidavit in support, on any other creditor of the judgment debtor or on any other interested person as may be appropriate in the circumstances.

33. In the present case the application for a charging order over the judgment debtor's claimed beneficial interest in the funds in Court was not made by an originating process: it was made in the proceedings (Cause 606 of 2008) in which the applicant, STPL, had obtained judgment against MOND. Nothing turns on that. But no direction for service of the charging order (notice to show cause) was contained in the order when made on 13 January 2012; nor when amended on 20 January 2012. On 24 April 2012 it was ordered that the re-listed charging order (but not the affidavits which, by then, had been filed in support of the original application and of the application to make the charging order absolute) should be served on CARD. There is nothing in the order of 24 April 2012 to suggest that, in directing service of the order on CARD, the judge was making an order for substituted service on the Wangs. And there is nothing in the material before this Court to suggest that the order of 24 April 2012 was sent to, or served on, CARD. As I have said, CARD had, on 19 April 2012, notified Nelson & Company that they had no instructions to represent any party in the charging order

proceedings (Cause 606 of 2008); and had returned the papers which had been sent to them. It is unclear from the material before this Court whether the judge knew that when he made the order of 24 April 2012. When the amended charging order was re-amended on 22 June 2012, it contained no direction for service on CARD (or on the Wangs): the only direction as to service was that the Re-Amended Order might be served on MOND, wherever it might be found, in Taiwan.

34. Orders were made on 13 March 2013, 16 April 2013 and 30 April 2013. There is no direction in any of those orders for service of the charging order on the Wangs, or (so far as material) on CARD. The order of 26 July 2013, discharging the freezing order which had been made by the Chief Justice on 4 December 2009, contains no direction as to service of the charging order. As I have said, that order of 26 July 2013 was sent to CARD; but that was an order made in proceedings (Cause POCL 15/2009) in which CARD had been on the record for the Wangs.

35. The position when the charging order came before Justice Quin on 2 August, therefore, was that the Wangs had never been served with the charging order (notice to show cause). They had been entitled to take the view, from 4 December 2009 (when the freezing order was made by the Chief Justice) until 26 July 2013 (when the freezing order was discharged by Justice Quin) that there would be no disposition of the funds in Court. When that position changed, they took the first opportunity to seek to intervene in Cause 606 of 2008.

36. On one view, the Wangs were not concerned to oppose an application that the charging order be made absolute. The charging order was an order over MOND's beneficial interest in the funds in Court. If MOND had a beneficial interest in the funds in Court there was nothing that the Wangs could put before the Court in opposition to an order that that beneficial interest be charged with the judgment debt owed by MOND to STPL. The dispute between MOND and the Wangs (and between STPL and the Wangs) was not whether MOND's beneficial interest (if any) in the funds in Court should be charged to secure payment of the judgment debt: the dispute between the Wangs (on the one hand) and MOND and STPL (on the other hand) was whether MOND had any beneficial interest in the funds in Court which could be the subject of a charging order. The Wangs' lack of concern in relation to the question whether the charging order over MOND's beneficial interest (if any) in the funds in

Court should be made absolute is demonstrated by the fact that there is no challenge on this appeal to paragraph 1 of the order of 2 August 2013. The Wangs do not oppose the charging order absolute: their concern is as to the beneficial ownership of the funds in Court.

37. The Wangs had set out their position on that issue in the affidavit sworn by Bruno Wang on 24 November 2009 in the asset recovery proceedings (Cause CJICL 12/2006) brought by the Attorney General. The Wangs were entitled to take the view that the Court would not decide that issue (*a fortiori*, decide that issue against them) without (i) giving them notice that the Court was minded to do so and (ii) giving them an opportunity to be heard on that issue.

38. Up to the time when Mr Jason Wood (of Harneys) left the hearing before Justice Quin on 2 August 2013 – having been refused the adjournment which he had sought on behalf of the Wangs – no notice had been given to the Wangs that the Court was minded to decide that issue against them. Even if the charging order to show cause had been served upon them – or had otherwise come to their notice, there was nothing in the charging order to suggest that the Court was being invited to order payment to STPL out of the funds in Court. That it was minded to do so first emerged at a stage of the hearing on 2 August 2013 when Mr Jayson Wood was not present and the Wangs were not represented.

39. The judge could not properly order payment to STPL out of the funds in Court without deciding that MOND was entitled to a beneficial interest in those funds which was at least equal to the amount that was to be paid out. He knew that the source of the funds in Court were Wang-controlled accounts. He knew, if he had read Bruno Wang's affidavit of 24 November 2011 (as the attendance note of the hearing on 2 August 2013 records) that the Wangs claimed ownership of the funds in those accounts; and so claimed ownership of the funds in Court. He must have expected, when (on 26 July 2013, on the application of the Director of Public Prosecutions) he discharged the freezing order which had been made by the Chief Justice on 4 December 2009 and directed that the balance of the funds should be returned "to its owner" within 28 days, after retaining in Court until further order the funds subject to the charging order which he had made on 13 January 2012, that the funds to be released would be paid to the Wangs; or, at the least, would not be paid to anyone else

(including MOND) unless and until the Court had decided where the beneficial interest in those funds lay. STPL could have no better interest to the funds retained in Court (as against the Wangs) than did MOND; and MOND had no better interest to the funds retained in Court (as against the Wangs) than it had in the funds which were the subject of the order released. On the evidence which was before the judge, the funds retained in Court and the funds released derived from the same source.

40. In those circumstances it was necessary, before the judge could properly order payment to STPL, on 2 August 2013, out of the funds retained in Court, that he explain why he had decided that MOND had a beneficial interest in those funds (to the exclusion of the Wangs); how he could reach that conclusion without dismissing the evidence in Bruno Wang's affidavit of 24 November 2011; on what basis that evidence could be dismissed without hearing submissions (and without testing the affidavit evidence in cross-examination) on the part of the Wangs; and how that decision could properly be made in circumstances that the Wangs had been given no notice that the issue was even before the judge on 2 August 2013. The judge did none of those things.

41. In those circumstances, as it seems to me, the judge was wrong to make an order for payment out of the funds in Court to STPL in the terms of paragraph 2 of his order of 2 August 2013. Paragraph 2 of the order is flawed by serious procedural irregularity; or, to put the point more simply, the Wangs were not treated fairly in relation to that part of the judge's order.

42. For those reasons I was satisfied at the conclusion of the oral hearing that the appeal should be allowed; and that paragraph 2 of the judge's order of 2 August 2013 should be set aside.

Sir Anthony Campbell, Justice of Appeal

43. I agree.

John Martin, Justice of Appeal

44. I also agree.