

**THE EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF THE VIRGIN ISLANDS**

**IN THE HIGH COURT OF JUSTICE
COMMERCIAL DIVISION**

**Claim No BVIHC (COM) 2023/0111
BETWEEN:**

MING HONG

Claimant

and

[1] WU YING

First Respondent

[2] MERRY CORNER HOLDING LIMITED

Second Respondent

Appearances:

Mr. John McCarroll SC of Appleby and, with him, Ms. Tamara Cameron for the Respondent/Claimant

Mr. Stuart Cullen of Collis Crill and, with him, Ms. Jaavonne Taylor for the Applicant/First Defendant

2026: May 11, 14

JUDGMENT

[1] **MITHANI J KC (Ag.):** This is the Court's oral judgment on the First Defendant's application dated 27 June 2025 by which she seeks the following orders: first, setting aside service of the proceedings out of the jurisdiction; and second, striking out the claim or, in the alternative, staying the proceedings on forum non conveniens grounds. I will refer to the First Defendant as either "the Applicant" or "Ms. Wu".

- [2] I have considered the claim form, statement of claim, the CPR 7.6 certificate for service out, the parties' affirmations, the exhibits, the skeleton arguments, the authorities bundles and the oral submissions made by counsel. I am grateful to counsel for their careful and detailed assistance.
- [3] The authorities cited to the Court were numerous. They included **Spiliada Maritime Corporation v Cansulex Ltd** [1987] 1 AC 460, HL; **Nilon Ltd v Royal Westminster Investments SA** [2015] UKPC 2; **IPOC International Growth Fund Ltd v LV Finance Group Ltd** HCVAP 20/2003 & 01/2004, 19/09/2005; **Anjie Investments Ltd v Tian Li Holdings Ltd** (2014, BVI High Court, unreported); **Oscar Trustee Ltd v MBS Software Solutions Ltd** BVIHCMAP 2021/0024, 17/08/22; **Citco Global Custody NV v Y2K Finance Inc** [2009] ECSC J1019-2; **Ian Peters v Robert George Spencer** [2009] ECSC J1222-4; **Tawney Assets Ltd v East Pine Management Ltd** BVIHC (COM) 106 of 2011, [2012] ECSC J0216-1 (Bannister J); on appeal, Civil Appeal No 7 of 2012, [2014] ECSC J0324-2 (Court of Appeal); **Leremeieva v Estera Corporate Services Ltd** [2024] ECSC J0603-1; **Abdul-Massih v Jarvis** [2024] VG 2024 HC 40; **Macmillan Inc v Bishopsgate Investment Trust Plc (No 3)** [1995] 1 WLR 978; **Akers v Samba Financial Group** [2017] UKSC 6; **Chellaram v Chellaram** [1985] Ch 409; and **De Dampierre v De Dampierre** [1988] AC 92.
- [4] It is not necessary for me to deal with all the authorities in this, an oral judgment. I deal with the principal points arising from them because they bear directly on the two central questions I need to decide in this application: whether the claim is properly arguable and whether the BVI is the appropriate forum.
- [5] Both sides addressed, to some extent, the merits of the underlying beneficial ownership dispute. I remind myself that this application is not the trial of that dispute. Save to the limited extent necessary to determine whether there is a good arguable claim and whether the proceedings have been properly brought here, I do not decide the merits.

Background

- [6] The claimant, Mr. Hong (to whom I will refer as “the claimant” or “Mr. Hong”), is a PRC-based industrial engineer and entrepreneur. His evidence is that he is a specialist in industrial dehumidification technology and that he has built a substantial business in that field.

- [7] The First Defendant, Ms. Wu, is his wife. She is a Chinese national and has been permanently resident in New Zealand since 2017. The parties met in 2002, married in July 2006 and separated in or about June 2023. They have one son.
- [8] The business was founded before the marriage. In April 2001, Mr. Hong incorporated Dryer Shanghai in the PRC to manufacture bespoke industrial dehumidifiers. The business later grew significantly, with global sales, service centres outside China and a substantial workforce.
- [9] On 1 July 2004, Mr. Hong incorporated Merry Corner Holding Limited, the Second Defendant (hereinafter “Merry Corner” or “the Company”), in the BVI. The Company is said to have served both as a holding company for the PRC operating companies and as an entity involved in sourcing raw materials from outside the PRC.
- [10] On 23 August 2018, Mr. Hong transferred his entire shareholding in Merry Corner to Ms. Wu, and she became registered as the sole shareholder and sole director of the Company. It is common ground that no consideration was paid for that transfer.
- [11] The parties give very different accounts of the purpose and effect of that transfer. Mr Hong says that the transfer was made for commercial reasons, including the protection of commercial confidentiality, and that he did not intend to transfer beneficial ownership to Ms. Wu. He says that Ms. Wu held the shares as a bare trustee for him under a resulting trust.
- [12] Ms. Wu says that the transfer was an outright transfer of both legal and beneficial title. Her case is that Mr. Hong spoke to her about the transfer and that she understood it to be a gift, consistent with the tax and reporting advantages of holding the shares as a New Zealand resident.
- [13] There is no written trust instrument or nominee declaration. The dispute is, therefore, likely to turn upon findings of fact concerning the circumstances of the transfer and, in particular, Mr. Hong's intention at the time.
- [14] Mr. Hong's evidence is that, following the transfer, he continued to administer the Company and the underlying business as before, using corporate service providers. Ms. Wu disputes aspects of that

account. What is clear is that after the breakdown of the marriage, Ms. Wu asserted control over the Company and its bank accounts.

- [15] Mr. Hong says that Ms. Wu has since caused the Company to commence proceedings in the PRC against entities associated with the business, causing commercial damage. I do not decide the merits of those allegations on this application. They do, however, explain why Mr. Hong seeks not merely declaratory relief but also consequential equitable relief.

The Relief Sought

- [16] The claim seeks, in substance, declarations that Ms Wu holds the shares in Merry Corner on trust for Mr Hong, an order for their transfer to him, rectification of the register if necessary, and an account of profits, damages, or equitable compensation for breach of trust.
- [17] The relief claimed makes clear that this is not, in substance, an application for summary rectification of the register. It is a full claim to determine beneficial ownership and to obtain consequential relief.

The Nature of the Proceedings

- [18] The Applicant's first and most important forensic move is to characterise the action as a summary rectification claim under **section 43 of the BVI Business Companies Act 2004**. On that footing, she relies heavily on **Nilon**.
- [19] I do not accept that characterisation. On an objective reading of the claim form and statement of claim, this is a plenary action. The core allegation is that a resulting trust arose because shares were transferred without consideration and without an intention to pass beneficial ownership to the defendant.
- [20] The prayer for rectification is expressly ancillary and conditional. It is not the cause of action. It is consequential relief that may or may not be required if the claimant first establishes the underlying equitable entitlement.
- [21] **Nilon** is an important authority, but it does not have the effect for which Ms. Wu contends. In **Nilon**, the Privy Council held that summary rectification proceedings could not properly be used as a vehicle

for resolving substantial disputes concerning beneficial ownership or contractual entitlement. A claimant who has not established a legal right to registration cannot use a summary rectification process to establish that right.

[22] That principle is not adverse to Mr. Hong. It supports the proposition that where beneficial ownership is genuinely disputed, the claimant must proceed by plenary action. That is precisely what has been done here.

[23] It follows that Ms. Wu's reliance on **Nilon** to strike out the claim is misplaced. The claim is not an impermissible attempt to use rectification as a procedural shortcut. It is an ordinary action seeking to establish the equitable right first, with rectification sought only if and when necessary.

Strike Out

[24] The Applicant seeks a strike out under CPR 26.3 and also seeks relief under CPR 7.8(2)(a) on the basis that the claimant lacks a good cause of action.

[25] The principles governing strike out are well established. Strike out is a draconian jurisdiction. It is to be exercised sparingly and only in clear cases. The Court proceeds on the basis that the pleaded facts are true unless they are plainly unsustainable. A claimant should not lightly be driven from the judgment seat.

[26] Several of the authorities relied upon by the claimant, including **Citco Global Custody**, **Ian Peters**, **Tawney Assets**, **Leremeieva** and **Abdul-Massih**, reflect the same underlying principle: where a case raises serious issues of fact requiring disclosure, witness evidence and cross-examination, strike out will ordinarily be inappropriate.

[27] Here, the claimant pleads four essential matters: a transfer of shares; absence of consideration; lack of intention to pass beneficial ownership; and the consequent arising of a resulting trust. Those are recognisable allegations in equity.

[28] It is not necessary for the claimant at this stage to prove that the resulting trust exists. It is enough that the claim is properly arguable. In my judgment, it plainly is.

- [29] Ms. Wu submitted that the absence of a written trust document was fatal or at least highly damaging. I do not accept that submission at the strike-out stage. The absence of a document may be an evidential matter at trial, but it does not make the pleaded claim legally incoherent.
- [30] The Applicant also submitted that the claim is contradicted by the fact that she was the claimant's wife and by the alleged presumption of advancement. That too is a matter for trial. Modern authorities, including **Laskar v Laskar** [2008] EWCA Civ 347, emphasise that presumptions such as the presumption of advancement are evidential tools and that the Court's task remains to identify the parties' true intention, particularly that of the transferor.
- [31] Accordingly, the issue of intention is unsuitable for summary determination. It will require findings of fact. It may require cross-examination. It cannot be resolved on this application.
- [32] I therefore reject the application to strike out the claim and reject the contention that the claimant has no good cause of action.

Service Out

- [33] The claimant served the proceedings out of the jurisdiction pursuant to CPR 7.3(7), which applies where the subject matter of the claim relates to the ownership or control of a company incorporated within the jurisdiction.
- [34] The gateway is plainly engaged. The claim concerns the ownership and control of shares in Merry Corner, a BVI company.
- [35] The mechanics of service are not in dispute. It is common ground that, subject to the outcome of this application, service has been validly effected upon Ms Wu. The issue is not whether documents reached Ms. Wu, but whether service out was justified.
- [36] It is also important to identify the remedy sought. Ms. Wu seeks a strike out on the basis that service out is not justified. That is not the same as a conventional stay application, although the forum analysis substantially overlaps with it.

- [37] Under CPR 7.8(4), the claimant bears the legal burden of satisfying the Court that he has a good cause of action, that the proceedings fall within a gateway, and that the BVI is the appropriate forum for trial. The real dispute is the third requirement.

Forum Conveniens: Applicable Principles

- [38] The starting point is **Spiliada**. The Court must identify the forum with which the action has the most real and substantial connection and in which the case may suitably be tried in the interests of all parties and the ends of justice.
- [39] The inquiry is not one of mere convenience. It is not a simple counting of connecting factors. It is a broad evaluative exercise.
- [40] **IPOC** applies the same approach in this jurisdiction, identifying the natural forum as the forum with which the action has the most real and substantial connection.
- [41] The legal burden remains throughout on a claimant to establish that the BVI is the appropriate forum for trial. Where a defendant contends that another jurisdiction is the natural forum, the Court must evaluate the connecting factors said to support that conclusion. Having done so, I am not satisfied that the factors relied upon by Ms. Wu are sufficient to displace the BVI as the forum with which this dispute has its most real and substantial connection.
- [42] Ms. Wu emphasised that she did not need to establish which is the most convenient forum in the abstract. That is correct so far as it goes. But where she invites the Court to conclude that BVI is not the appropriate forum because New Zealand or the PRC is the natural forum, the Court must examine the juridical and practical connections relied upon for that proposition.

The New Zealand Matrimonial Proceedings

- [43] The Applicant placed considerable reliance on the fact that Mr. Hong commenced relationship property proceedings in New Zealand.
- [44] However, neither party suggested during the hearing that the matrimonial proceedings were directly concerned with determining the beneficial ownership issue raised in these proceedings.

- [45] The New Zealand proceedings are concerned with relationship property. The issue in this action is whether Ms. Wu holds BVI shares on a resulting trust for Mr. Hong and whether consequential equitable remedies should be granted.
- [46] There is, therefore, no true *lis alibi pendens*. Even if there were some overlap, **De Dampierre** makes clear that the existence of foreign proceedings is only one factor in the **Spiliada** analysis.
- [47] The applicant did not adduce expert evidence of New Zealand law establishing that the New Zealand court is seised of, or would be able to grant, the full range of relief sought in these proceedings, including the transfer of BVI shares, rectification of the register (if necessary), an account of profits and equitable compensation.
- [48] The New Zealand proceedings, therefore, do not materially undermine the BVI as the natural forum.

Nilon and the BVI Gateway

- [49] The Applicant relied on **Nilon** not only on the strike out but also on the forum. She submitted that **Nilon** shows that the mere fact that a company is incorporated in the BVI does not, in itself, make the BVI the appropriate forum.
- [50] I accept that proposition. A BVI incorporation point, standing alone, will often be insufficient. BVI companies are widely used in international corporate structures, and the Court must be astute not to treat incorporation, of itself, as decisive.
- [51] However, this case is materially different from **Nilon**. In **Nilon**, the alleged arrangement, witnesses, documents and underlying commercial activity pointed elsewhere, and the BVI connection was little more than incorporation. Here, the claim directly concerns existing shares in a BVI company, their beneficial ownership, the transfer of those shares, the register of members, and consequential corporate and equitable relief.
- [52] The BVI connection is, therefore, not merely formal. It is juridical and proprietary.

Governing Law and Situs

- [53] The governing law issue is central to the forum analysis.
- [54] The claimant relies on **Macmillan v Bishopsgate Investment Trust Plc (No 3)** [1995] 1 WLR 978 and other authorities for the proposition that questions concerning proprietary interests in shares are generally governed by the law of the place of incorporation. I accept the substance of that submission for present purposes.
- [55] The shares in issue are shares in a BVI company. The register is maintained in the BVI. The situs of the shares is the BVI. The relief sought directly affects those shares and the Company's register.
- [56] Ms. Wu says that, if a trust existed, the trustee was resident in New Zealand, and the alleged arrangement was made between persons in the PRC and New Zealand. She relies on **Chellaram** and submits that the connecting factors usually relevant in trust cases — particularly the residence of the trustee and the jurisdictions most closely connected with the alleged trust relationship — point away from the BVI.
- [57] In my judgment, that analysis gives insufficient weight to the specific nature of the property in issue. The claim concerns beneficial ownership of BVI shares. The proprietary consequences of the transfer are closely connected with, and for present purposes appear to be governed by, BVI Law.
- [58] Even if one approaches the matter through trust principles, the alleged trust is not an elaborate discretionary or administrative trust. It is said to be a bare resulting trust over BVI shares. The alleged duties are minimal: to hold and transfer the shares in accordance with the claimant's beneficial entitlement.
- [59] The juridical centre of gravity remains the BVI.

Place of Incorporation

- [60] The applicant relies on **Oscar Trustee** for the proposition that the place of incorporation is often given modest weight in BVI forum disputes. I accept that principle.

- [61] But that case must be applied with care. Where the dispute concerns only a BVI company, incorporation may indeed be of modest significance. Where, however, the dispute is directly about the ownership and control of shares in a BVI company, the place of incorporation assumes considerably greater significance, although it remains one factor among several and is not by itself determinative.
- [62] This is not a case in which the BVI company is merely a passive label. The relief sought concerns the Company's shares, its register and the consequences of the share transfer.
- [63] In those circumstances, incorporation, situs and governing law collectively carry substantial weight.

Witnesses, Language and Practical Convenience

- [64] Ms. Wu's strongest practical point concerns witnesses. Ms. Wu resides in New Zealand. Mr. Hong resides in the PRC. Neither party resides in the BVI. The relevant communications between the parties were conducted in Mandarin, and travel to the BVI is likely to be materially more inconvenient for both parties than travel to New Zealand or the PRC.
- [65] Those are legitimate considerations, and I take them into account.
- [66] However, witness convenience is not determinative. The BVI Commercial Court routinely deals with international litigation involving parties, documents and witnesses abroad. Remote evidence is now common in commercial litigation.
- [67] I should also add this. If the parties consider that the interests of justice require either an in-person hearing or a hybrid hearing, there is nothing before the Court to suggest that either party is unable to travel by reason of any disability or other medical impediment. While I readily accept that both parties have substantial business and personal commitments and lead busy professional lives, that is not unusual in commercial litigation of this nature. Given the substantial value and importance of the dispute, those considerations significantly outweigh the inconvenience and practical burdens of international travel. In the circumstances, travel considerations do not materially diminish the appropriateness of the BVI as the forum for trial.

[68] In **Abdul-Massih**, Webster J observed that developments in technology and remote hearings have reduced the weight traditionally attached to witness location, although it remains a relevant factor. I respectfully adopt that approach.

[69] Moreover, the central witness on the claimant's case is Mr. Hong, because the principal factual issue is his intention when he transferred the shares. He has chosen the BVI forum and is prepared to give evidence here. Ms. Wu's evidence will also plainly matter, but her residence in New Zealand does not outweigh the BVI juridical connections.

[70] The practical inconvenience of litigating in the BVI is, therefore, insufficient to displace the BVI as the natural forum.

Underlying Business and Documents

[71] The Applicant also points out that the underlying operating business is in the PRC and that no relevant witnesses or documents are located in the BVI.

[72] I accept that the underlying business is principally in the PRC and that the parties themselves are not resident in the BVI.

[73] However, the issue before the Court is not the day-to-day operation of the PRC business. It is the beneficial ownership of BVI shares and the remedies flowing from that ownership. The location of the underlying operating business is therefore of limited significance.

[74] As to documents, modern commercial litigation no longer turns substantially on the physical location of documents. In any event, the key corporate documents concerning the Company and its register are BVI corporate documents.

PJSC National Bank Trust v Shishkhanov

[75] In the course of argument, I also referred to my decision in **PJSC National Bank Trust v Shishkhanov**, BVIHC (COM) 2023/0087, 22 November 2025.

- [76] That was a jurisdiction challenge in substantial commercial proceedings in this Court. The judgment emphasised the importance of examining the true substance of the dispute and the juridical connections relied upon. It also demonstrates that forum analysis is not a mechanical counting exercise but a realistic evaluation of the centre of gravity of the claim.
- [77] Applying that approach here, the substance of the dispute is not merely a matrimonial dispute between two foreign spouses. It is, in substance, a dispute concerning proprietary and equitable rights in BVI shares, the legal effect of a transfer of those shares and the corporate relief necessary to give effect to the Court's determination of those rights.
- [78] That analysis strongly supports the conclusion that the BVI is the appropriate forum.

Overall Evaluation

- [79] Standing back, the applicant's submissions have practical force but, in my judgment, do not overcome the juridical connections pointing to the BVI. New Zealand is connected to the dispute because Ms. Wu resides there and because there are matrimonial proceedings underway there. The PRC is connected because Mr. Hong resides there and the operating business is located there.
- [80] But neither New Zealand nor the PRC is the juridical centre of this claim. The claim concerns shares in a BVI company, BVI corporate records, the effect of a transfer of BVI shares, and remedies that directly affect the ownership and control of a BVI company.
- [81] The proprietary and corporate aspects of the dispute point strongly towards the BVI. In my judgment, the juridical centre of gravity of the dispute is the BVI.
- [82] I should emphasise that nothing in this judgment determines the ultimate merits of the parties' competing cases concerning beneficial ownership. Those issues remain for trial and will be determined after disclosure, witness evidence and cross-examination.
- [83] Although the claimant bears the legal burden of establishing the appropriate forum, I am satisfied that the claimant has discharged the burden resting upon him of establishing that the BVI is the

appropriate forum for trial. The matters relied upon by the applicant do not justify a contrary conclusion.

Conclusion

- [84] For those reasons, the application to strike out the claim is dismissed.
- [85] The application to set aside service out of the jurisdiction is dismissed.
- [86] The alternative application for a stay on forum non conveniens grounds is dismissed.
- [87] I will hear counsel on costs and consequential directions.
- [88] Finally, in the event that any appeal is brought from this judgment, the transcript of the oral judgment, corrected only for typographical errors and editorial matters, must first be submitted to the Judge for approval. No transcript of the judgment is to be included in any appeal bundle unless and until it has been approved by the Judge.

Abbas Mithani KC
High Court Judge (Ag)

By the Court

Registrar