IN THE SUPREME COURT OF GIBRALTAR

Neutral Citation Number 2025/GSC/017

2025/ORD/012

BETWEEN:

(1) READY MAKERS INC

(2) DAVID BENNAHUM

(3) BITKRAFT VENTURES BVI TOKEN BLOCKER 1 LIMITED

(4) DAVIDI GILO

(5) APPLICABLE LIMITED

(6) DENARIUS PROPERTIES LIMITED

Claimants

-and-

(1) CHRISTINA MACEDO

(2) DIECIXI CO LIMITED

(3) READY MAKER (GIBRALTAR) LIMITED

Defendants

Keith Azopardi KC with **Kelly Power (**instructed by **TSN)** for the **Claimants**

James Ramsden KC, with **Philippe Kuhn**, **Elliott Phillips** and **Paul Grant (**instructed by **Signature Litigation)** for the **Defendants**

Judgment date: 17 April 2025

JUDGMENT

RESTANO, J:

Introduction

1. This is my judgment following a hearing on 3 and 4 April 2025 for the continuation of a trust preservation and worldwide freezing order, granted by me on 4 February 2025. That order, as varied on 20 February 2025 ("the order") prohibits, amongst other things, any dealings with the shares in Ready Maker (Gibraltar) Limited ("Ready Gibraltar") and $PLAY tokens ("the tokens"), a form of digital asset issued by Ready Gibraltar. Further, the order provides that around 542 million tokens be provided to a court appointed custodian.

2. The Defendants now seek the discharge, or alternatively, the variation of the order, which they say has drastically reduced the value of the tokens, and is driving the business into the ground.

3. The Claimants' claim is that, even though Ms Macedo, the First Defendant, is named as the legal owner of the shares in Ready Gibraltar, Ready Makers Inc. ("Ready US") is the ultimate beneficial owner of those shares. Further, they say that Ms Macedo, a former employee of Ready US, is in hostile control of Ready Gibraltar.

4. The Defendants say that the Claimants' actions are nothing short of a brazen corporate raid, and that Ms Macedo is not just the legal, but also the beneficial owner of Ready Gibraltar's shares.

5. Numerous detailed witness statements have been filed by both sides. These include three witness statements of David Bennahum, two witness statements of Eli Beniso, and witness statements from Scott Rupp, Davidi Gilo and Bradley Chernin, for the Claimants. The Defendants have filed four witness statements of Christina Macedo, the witness statement of John Azzopardi, and four witness statements of Paul Grant. These witness statements, and voluminous exhibits are included in some twenty or so lever

arch files provided for this hearing, which also include numerous authorities. In this judgment, I have not sought to address every point made on each side, especially on the merits of the parties' respective cases. To do so, would in my opinion descend to the sort of analysis of detail in which the court should not engage at an interim stage. Rather, in this judgment I have focused on the important aspects of the evidence, as I see it, that are relevant for the issues that the court is required to determine when considering whether the order should be renewed or discharged. The points of detail on the evidence are for the trial.

Some background

6. Ready US was created in 2016 by David Bennahum, primarily as a mobile gaming platform enabling users to create their own video games on mobile devices. It was originally a New York corporation, and in 2019, it was converted to a Delaware corporation. As well as being the founder of Ready US, Mr Bennahum was Ready US's CEO between 2016 and July 2024, and again as from December 2024.

7. One of Ready US's investors was Bitkraft ventures, a games and interactive media venture capital firm. Bitkraft Ventures BVI Token Blocker 1 Limited ("Bitkraft"), which is the Third Claimant, is the Bitkraft entity that entered into a Token Agreement with Ready Gibraltar, and which I will come to later. Davidi Gilo, who is the Fourth Claimant, was also an investor in Ready US, and he is also a shareholder. The Fifth and Sixth Claimants are both Gibraltar companies and special purpose vehicles for a trust established for the family of Mr Gilo.

8. Ready Makers Canada ("Ready Canada") was created in 2017. Ready Canada was owned by Mr Bennahum (90%) and Ready US (10%) and its role under a service agreement is to undertake various technical services on behalf of Ready US.

9. Ms Macedo, who is the First Defendant, served as operations manager for Ready Canada from 2017 to 2024, and she took over from Mr Bennahum as CEO of Ready US in July 2024, until December 2024.

10. In 2022, Ready US set about to launch a token called $AURA, the purpose of which was to create a digital economy or ecosystem within the gaming platform.

11. Gibraltar was identified as the best jurisdiction to launch the tokens, which ended being the $PLAY token ("the token"), and Ready Gibraltar was created in 2022 for that purpose. The tokens were later launched on 10 December 2024.

12. The registered shareholders of Ready Gibraltar were originally Ms Macedo (50%) and Denarius Properties Limited ("Denarius"), which is the Sixth Claimant (50%). The sole director of Denarius is Eli Beniso, a partner at Hassans International Law Firm Limited ("Hassans"). In 2023 Denarius transferred its shareholding to Ms Macedo, which made her the sole registered shareholder of Ready Gibraltar.

13. On 30 August 2022, Ready US and Ready Gibraltar entered into an Intellectual Property License and Assignment and Services Agreement ("the IP Agreement"). Under the IP Agreement, Ready US agreed to provide services to Ready Gibraltar, and in exchange, Ready Gibraltar agreed to pay certain fees. In addition, Ready Gibraltar agreed to issue 107,443,656 preferred tokens and 92,556,343.76 common tokens (making a total of 200 million tokens, or 20% of the total tokens issued) to designated entities and individuals. These include the issue of preferred tokens to Applicable Limited (30,666,516 tokens), Bitkraft (20,408,649) and Mr Gilo (2,646,561). Further, it provides for the issue of common tokens to Ms Macedo (11,310,994) and Mr Bennahum (75,844,329).

14. Ready Gibraltar also entered into various agreements. It entered into a Private Token Purchase Commitment Form dated 27 August 2022 with Mr

Bennahum, a Token Subscription Agreement dated 30 June 2024, with Bitkraft and an agreement along similar lines with Denarius ("the Token Agreements").

15. Under the Token Agreements, Ready Gibraltar was required to issue the following tokens when the tokens were launched: 40 million tokens to Mr Bennahum in return for payment of US$384,000, 20,408,649 tokens to Bitkraft in exchange for payment of US$1,000, and 3,947,368 tokens to Denarius.

16. Although the Denarius Token Agreement was performed, notices of termination were served on Mr Bennahum and Bitkraft in relation to their Token Agreements in December 2024, which they have not accepted.

The order

17. The effect of the order is that Ready Gibraltar's shares are frozen, and that Damex, the court-appointed custodian, holds some 542 million tokens, which are the tokens that have not been allocated to third parties.

18. Ready US asserts a proprietary claim to around 150 million of these tokens based on the IP Agreement, including approximately 60 million claimed by Mr Bennahum and Bitkraft under the Token Agreements. Ready US further asserts "*an indirect proprietary claim*" to all these unallocated tokens in the sense that it claims ownership of the shares.

19. Following an application for a variation of the order, on 20 February 2025, I clarified some aspects of the order as originally made, and I permitted Ready Gibraltar's use of up to 15 million tokens held in a specified wallet pending this hearing.

An overview of the parties' submissions

20. Mr Ramsden KC for the Defendants said that the order should be discharged on the basis that there is no good arguable case or serious issue to be tried. He said that the token was developed and launched by Ms Macedo and Ready Gibraltar, and that the corporate and regulatory documents prepared by Hassans reflect the true position, which is that Ms Macedo is the legal and ultimate beneficial owner of 100% of Ready Gibraltar's shareholding. Further, he said that Ready US was, until recently, a defunct and failed company, which the Claimants failed to inform the court about, in breach of their duty of full and frank disclosure when they applied for the order on short notice.

21. Further, he said that there is no real risk of dissipation, and that the court should not in its discretion allow the order to stand. Alternatively, the Defendants seek fortification of the cross-undertaking as to damages in the sum of £10 million.

22. In response, Mr Azopardi KC for the Claimants maintained that Ready Gibraltar was a Ready US creation, and that the shares of Ready Gibraltar were held on trust by Mr Macedo for Ready US. He relied on a detailed chronology, and various documents during the period 2022 to 2024, which he said showed that Ms Macedo's claims are demonstrable lies. He said that Ms Macedo is in hostile control of Ready Gibraltar, that there is real risk of dissipation, and that the court should in its discretion renew the order.

Discussion

23. It is convenient first to address the true nature of the Claimants' claim, and whether it is proprietary or not, as that has a bearing on the approach the court should take to the injunction application.

24. Turning first to the 'proprietary' claim to the 150 million tokens, which arises from the IP Agreement and the Token Agreements.

25. As outlined above, under Clause 5.1 of the IP Agreement, certain tokens were to be issued to various parties as set out in Exhibit A to that agreement and in the form of the subscription agreement set out in Exhibit C. The Token Agreement executed by Mr Bennahum provided for fewer tokens to be allocated to him than as set out in Exhibit A to the IP Agreement (40 million, as opposed to the original 75 million) and subject to payment of US$ 384,000. The Token Agreement executed by Bitkraft provided for the same number of tokens to be allocated to it, i.e. around 20 million, subject to payment of US$1,000.

26. The IP Agreement is subject to the Delaware law and jurisdiction. Further, a claim is already being advanced by Ready US against Ready Gibraltar in the Delaware courts. The primary basis on which the claim has been advanced in the Delaware courts is breach of contract under the IP Agreement, although there are also claims for conversion of misappropriation of trade secrets.

27. Any order this court makes in relation to claims made under the IP Agreement must therefore be ancillary to those foreign proceedings under section 17 of the Civil Jurisdiction and Judgments Act 1993.

28. Section 17 of the CJJA, empowers the court to award interim relief where proceedings have been or are to be commenced in another jurisdiction. It provides a two-stage approach when the court is considering whether to grant an injunction. First, do the facts warrant the grant of relief if substantive proceedings were brought in Gibraltar? In other words, would this court have granted a freezing injunction in the form sought by Ready US if the proceedings were domestic? Secondly, and if so, whether the fact that the court has no jurisdiction apart from this section makes it 'inexpedient' to grant relief under section 17.

29. The English Court of Appeal in *Motorola Credit Corp v Uzan (No.2)* [2003] EWCA Civ 752; [2004] 1 WLR 113, explained that there were five particular considerations which have to be borne on mind when considering

whether it is inexpedient to make an order in these circumstances. These factors can be summarised as follows: (1) whether making the order will interfere with the management of the case in the primary court; (2) whether it is the policy of the primary court itself to make worldwide freezing orders; (3) whether there is a danger that the orders made will give rise to disharmony or confusion and/or there is a risk of conflicting, inconsistent or overlapping orders in other jurisdictions; (4) whether at the time the order is sought there is likely to be a potential conflict as to jurisdiction; and (5) the order can be enforced.

30. Following an expedited hearing, the Delaware court granted the temporary restraining order ("TRO") on 3 January 2025. The TRO is very limited in scope, as it only provides for Ready Gibraltar to return the original source code, as offered by it, as well as returning access to the domains to Ready US. The TRO does not grant freezing or proprietary injunction in relation to the contractual claim for 150 million tokens, which is the subject of the dispute in that jurisdiction (as pleaded in the complaint and based on the IP Agreement) assuming it has the power to do so. Nor did the Delaware court say that such relief would be appropriate in Gibraltar. On the contrary, Judge Fioravanti, Vice Chancellor, said that the relief he was granting was very narrow.

31. Further, any interim relief to be granted by the Gibraltar courts can only be of a kind that the court has power to grant in the Delaware courts. No evidence was put before the court by the Claimants that the relief they sought in Gibraltar was relief that the Delaware courts could order.

32. In these circumstances, I do not consider that it is appropriate for this court, acting ancillary to the Delaware proceedings, to grant relief that goes beyond what the Delaware court has considered appropriate in relation to that part of the claim.

33. Moving on to the Token Agreements with Mr Bennahum and Bitkraft, which are both subject to Gibraltar law and jurisdiction.

34. Mr Bennahum did not pay the promised consideration under his Token Agreement. Schedule 1 to his Token Agreement, entitled 'Token Sale Terms', includes a provision entitled "Cancellation; Refusal or Purchase Requests" granting Ready Gibraltar the right to cancel the token delivery obligation under the Token Agreements at its sole and absolute discretion:

> "*[Ready Gibraltar] reserves the right to refuse or cancel Token purchase requests at any time in [Ready Gibraltar's] sole and absolute discretion. In such an event the consideration paid by the [purchaser] shall be rejected or refunded.*"

35. Ready Gibraltar exercised its right to cancel that agreement by serving a termination notice on Mr Bennahum on 20 December 2024.

36. The same provision on cancellation applies to the Bitkraft Token Agreement, and a similar termination notice was served on Bitkraft on 9 December 2024. Whilst Bitkraft did pay the US$1,000 due under the Token Agreement, that sum was returned to it.

37. Further, paragraph 19 of the Token Agreements provide, insofar as is material, as follows (with my emphasis):

> ***"(i) in the event of the Termination of this Agreement, the repayment of all or part of the Consideration shall be my sole exclusive remedy for monetary damages under this Agreement and the Token Sale Terms.***
>
> *(ii) [Ready Gib] (or any of its agents, representatives, nominees or affiliates), shall not be liable under this Agreement and/or Token Sale Terms for any consequential or indirect loss, loss of profit or revenue, loss of goodwill or special, punitive or enhanced damages arising out of or relating to any breach of the Agreement and the Token Sale Terms.*
>
> *(iii)* ***The liability of [Ready Gibraltar] arising out of or related to this Agreement and the Token Sale Terms, whether arising out of or as a result of breach of contract, tort or otherwise, shall not exceed the Consideration.***

(iv) All of my rights and remedies are contained or referred to in this Agreement and the Token Sale Terms, and you shall not have any other right or remedy, including a claim for innocent or negligent misrepresentation or negligent misstatement.

(v) Every term or condition implied by law in any jurisdiction in relation to the subject matter of this Agreement and the Token Sale Terms shall be excluded to the fullest extent possible, and to the extent that it is not possible to exclude any such term or condition, I irrevocably waive any right or remedy in respect of it…"

38. Further, the Token Sales Terms in each of the Token Agreements also contain 'Limitation of Liability' clause in schedule 1 which provides (with my emphasis):

"NEITHER THE COMPANY NOR ANY OF ITS RESPECTIVE REPRESENTATIVES OR AFFILIATES, SHALL BE LIABLE UNDER THESE TERMS FOR ANY CONSEQUENTIAL OR INDIRECT LOSS OF PROFITS OR REVENUE, LOSS OF GOODWILL OR SPECIAL, PUNITIVE OR ENHANCED DAMAGES ARISING OUT OF OR RELATING TO ANY BREACH OF THESE TERMS

THE LIABILITY OF THE COMPANY ARISING OUT OF OR RELATED TO THESE TERMS AND/OR THE TOKENS, WHETHER ARISING OUT OF OR AS A RESULT OF BREACH OF CONTRACT, TORT OR OTHERWISE, SHALL NOT EXCEED THE TOTAL AMOUNT PAID BY THE PURCHASER FOR THE TOKENS.

THE LIMITATION SET FORTH HEREIN WILL NOT LIMIT OR EXCLUDE LIABILITY FOR THE GROSS NEGLIGENCE, FRAUD OR INTENTIONAL, WILLFUL OR GROSS MISCONDUCT OF COMPANY.

YOU ACKNOWLEDGE THAT ALL OF YOUR RIGHTS AND REMEDIES ARE CONTAINED OR REFERRED TO IN THESE TERMS, AND YOU SHALL NOT HAVE ANY OTHER RIGHT OR REMEDY, INCLUDING A CLAIM FOR INNOCENT OR NEGLIGENT MISREPRESENTATION OR NEGLIGENT MISSTATEMENT.

EVERY TERM OR CONDITION IMPLIED BY LAW IN ANY JURISDICTION IN RELATION TO THE SUBJECT MATTER OF THESE TERMS SHALL BE EXCLUDED TO THE FULLEST EXTENT POSSIBLE, AND TO THE EXTENT THAT IT IS NOT POSSIBLE TO EXCLUDE ANY SUCH TERM OR CONDITION, YOU IRREVOCABLY WAIVE ANY RIGHT OR REMEDY IN RESPECT OF IT."

39. On the face of it, therefore, neither Mr Bennahum nor Bitkraft are entitled to relief under the Token Agreements. In any event, any compensation is capped at the limited consideration.

40. Mr Azopardi said that these contractual arrangements needed to be considered holistically and that there were implied terms that his clients could rely on, but which he needed time to plead. In the absence of any such pleading, however, the court can hardly conclude that there is a good arguable case in that regard.

41. Mr Azopardi also referred to the Claimants' overarching allegations of fraud, conspiracy and bad faith, which went to the heart of these contractual arrangements.

42. Pleadings of fraud or dishonesty must be properly pleaded. A recent restatement of the principles that apply to such pleadings can be found in the judgment of Mr Justice Calver in *ED & F Man Capital Markets Limited v Come Harvest Holdings Limited* [2022] EWHC 229 (Comm) at paragraphs 60 to 71. In particular, the judge states as follows at paragraph 71 of his judgment:

> "*I also bear in mind that as to inferring fraud or dishonest conduct generally:*
>
> *i) It is not open to the Court to infer dishonesty from facts which are consistent with honesty or negligence, there must be some fact which tilts the balance and justifies an inference of dishonesty, and this fact must be both pleaded and proved: Three Rivers District Council v Bank of England [2001] UKHL 16; [2003] 2 A.C. 1 , §§55-56 per Lord Hope and §§184-186 per Lord Millett.*
>
> *ii) The requirement for a claimant in proving fraud is that the primary facts proved give rise to an inference of dishonesty or fraud which is more probable than one of innocence or negligence: JSC Bank of Moscow v Kekhman [2015] EWHC 3073 (Comm) at §20 per Bryan J; Surkis & Ors v Poroshenko & Anr [2021] EWHC 2512 (Comm.) at §169(iv) per Calver J.*

iii) Although not strictly a requirement for such a claim, motive " is a vital ingredient of any rational assessment " of dishonesty: Bank of Toyo-Mitsubishi UFJ Ltd v Baskan Sanayi Ve Pazarlama AS [2009] EWHC 1276 (Ch) at §858 per Briggs J. By and large dishonest people are dishonest for a reason; while establishing a motive for conspiracy is not a legal requirement, the less likely the motive, the less likely the intention to conspire unlawfully: Group Seven Ltd v Nasir [2017] EWHC 2466 (Ch) at §440 per Morgan J.

iv) Assessing a party's motive to participate in a fraud also requires taking into account the disincentives to participation in the fraud; this includes the disinclination to behave immorally or dishonestly, but also the damage to reputation (both for the individual and, where applicable, the business) and the potential risk to the " liberty of the individuals involved " in case they are found out: Bank of Tokyo-Mitsubishi UFJ Ltd v Baskan Sanayi Ve Pazarlama AS [2009] EWHC 1276 (Ch) at §§858, 865 per Briggs J."

43. Turning to the particulars of fraud appearing at paragraph 169 of the Particulars of Claim. It is alleged that the transfer of shares to Diecixi Co Limited ("Diecixi") on 4 December 2024 was fraudulent. This is dealt with further below, but it is a bare pleading that is equally consistent with an innocent and honest motive. There are also allegations about misappropriating or failing to account for Ready Gibraltar shares. These, however, are nothing more than allegations based on the Claimants' narrative, and not allegations that 'tilt the balance' such as to justify an inference of dishonesty. The particulars of conspiracy and bad faith appear to be largely similarly defective and unsustainable. As such, it seems to me that there is no good arguable case advanced based on these allegations.

44. It is difficult to see, therefore, on the material before the court how a contractual claim can have any hope of success.

45. In any event, Mr Azopardi said that a contractual claim was not being pursued in Gibraltar, as was the case in Delaware. Rather, he said that the claim was being made under trusts law, albeit founded on these contractual arrangements. He first relied on *Michaels v Harley House (Marylebone) Ltd* [2000] Ch. 104 as authority for that proposition.

46. In my view, *Michaels* does not support Mr Azopardi's submission. The passage in Lord Justice Robert Walker's judgment relied on by Mr Azopardi, namely, is at p.113H, and states as follows:

> "*The starting point, on which both sides agree, is that a contract for the sale of shares (at any rate in a company whose shares are not quoted and readily obtainable on the market) is, like a contract for the sale of land, at first sight enforceable by specific performance; and that the effect of specific performance being available is to make the vendor of an uncompleted contract of sale a trustee of some sort for the purchaser…*"

47. That, however, needs to be read together with the judge's further comments at page 114 F-G, where he states that the conditionality of a contract prevents any sort of trusteeship arising.

48. What this means in this case, therefore, is that as the contractual claim is disputed, it remains contractual in nature. If, for example, the Delaware court were to make some sort of declaration, then some sort of ancillary trust claim might be possible, but that is not the case.

49. Mr Azopardi further submitted, that even if Delaware law did not recognise a trust, this could still exist under Gibraltar law. In support of this proposition, he relied on *Luxe Holdings Ltd v Midland Resources Holdings Ltd* [2010] EWHC 1908 (Ch), as cited in paragraph 4-10 (footnote 63) of Lewin on *Trusts* (20th ed., Sweet & Maxwell). That states, that provided that the contract is governed by English law, it makes no difference that the shares are foreign shares indirectly owned through subsidiaries of the seller and that under the law of the country where the shares are situated an indirect sale of them is not permitted or trusts are not recognised: see further paragraph 36 of the judgment of Mr Justice Roth in *Luxe Holdings Limited*.

50. Applying that analysis correctly to the present situation, which is the reverse to that in *Luxe Holdings Ltd*, does not in my view support Mr Azopardi's submission. The IP Agreement is governed by Delaware law, and the court

therefore needs to be satisfied that Delaware law recognises trusts. The Claimants have not adduced any such evidence, and there is therefore no force in that submission.

51. It seems to me, therefore, that all these arguments in relation to the 150 million tokens break down at various levels.

52. Mr Azopardi also argued that because the £30,000 invoice raised by Hassans for Ready Gibraltar's incorporation (and other fees) was paid by Ready US (which is disputed) some sort of resulting trust arose in relation to the shares. In support of this contention, Mr Azopardi relied on further passages in Lewin, at paragraphs 10-021 and 10-023.

53. The passages in Lewin relied on by Mr Azopardi refer to the general rule that when real or personal property (or personalty) is purchased in the name of a stranger, a resulting trust is presumed in favour of the person who paid the purchase money, if he did so in the character of purchaser. In my view, there is a world of difference between the factual scenarios which these passages envisage give rise to a resulting trust, and the proposition advanced here that payment of Hassans' fees, and other fees, in this case would give rise to a resulting trust in relation to the ownership of shares, said to have been worth up to £100 million.

54. There is then the overarching argument advanced by Mr Azopardi that the claim in relation to all the tokens is ultimately an indirect proprietary claim, or that it has a "*proprietary flavour*", because Ready US is claiming beneficial ownership of the Ready Gibraltar shares. It seems to me that there are also considerable hurdles for the Claimants to overcome with these arguments. I will deal, therefore, with the application primarily as one for a worldwide freezing injunction, but I will nevertheless consider the application for a proprietary injunction in the alternative.

The relevant legal principles

55. To justify the grant of a freezing order, the court must be satisfied that there is a good arguable case on the merits, that there is real risk of dissipation, and that it is just and convenient to make the order sought.

56. The gateway merits test for freezing injunctions and interim injunctions generally, including proprietary injunctions, was explained by the English Court of Appeal in *Dos Santos v Unitel SA* [2024] EWCA Civ 1109; [2025] 2 WLR 255, to be the same as the summary judgment test of 'no real prospects of success' under CPR r.24.3, i.e. not merely arguable, but one that carries some degree of conviction. Further, Sir Julian Flaux C, endorsed the principles summarised in *Easyair Ltd (trading as Openair) v Opal Telecom Ltd* [2009] EWHC 339 (Ch), as follows at paragraph 15 of Mr Justice Lewison's judgment:

> "*The correct approach on applications by defendants is, in my judgment, as follows:*
>
> *i) The court must consider whether the claimant has a "realistic" as opposed to a "fanciful" prospect of success: Swain v Hillman [2001] 2 All ER 91 ;*
>
> *ii) A "realistic" claim is one that carries some degree of conviction. This means a claim that is more than merely arguable: ED & F Man Liquid Products v Patel [2003] EWCA Civ 472 at [8]*
>
> *iii) In reaching its conclusion the court must not conduct a "mini-trial": Swain v Hillman*
>
> *iv) This does not mean that the court must take at face value and without analysis everything that a claimant says in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents: ED & F Man Liquid Products v Patel at [10]*
>
> *v) However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial: Royal Brompton Hospital NHS Trust v Hammond (No 5) [2001] EWCA Civ 550 ;*
>
> *vi) Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller*

investigation into the facts at trial than is possible or permissible on summary judgment. Thus the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case: Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceutical Co 100 Ltd [2007] FSR 63 ;

vii) On the other hand it is not uncommon for an application under Part 24 to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it. The reason is quite simple: if the respondent's case is bad in law, he will in truth have no real prospect of succeeding on his claim or successfully defending the claim against him, as the case may be. Similarly, if the applicant's case is bad in law, the sooner that is determined, the better. If it is possible to show by evidence that although material in the form of documents or oral evidence that would put the documents in another light is not currently before the court, such material is likely to exist and can be expected to be available at trial, it would be wrong to give summary judgment because there would be a real, as opposed to a fanciful, prospect of success. However, it is not enough simply to argue that the case should be allowed to go to trial because something may turn up which would have a bearing on the question of construction: ICI Chemicals & Polymers Ltd v TTE Training Ltd [2007] EWCA Civ 725 ."

57. Popplewell L.J. in *Dos Santos* observes at paragraph 129 of his judgment that proprietary injunctions could act just as invasively as freezing orders. He also emphasises at paragraph 130 the need to give anxious scrutiny to the second limb of the test, namely risk of dissipation but also to the third, namely whether it is just and convenient to make the order. Further, he states that the third limb of the test, namely the just and convenient criterion, is ultimately the whole test expressed in section 37 of the Senior Courts Act, and should be considered in every case, having regard among other things to the effect of granting, or not granting, the order.

58. The freezing injunction will shortly be celebrating its 50th anniversary since it was granted in *Mareva Company Naviera Sa v International Bulk Carriers* [1975] 2 Lloyd's Rep 509. It has been described as one of the

law's nuclear weapons. Even though its scope has been enlarged over the years, and it is now a regular feature of cross-border litigation, it is, nevertheless, still an exceptional remedy.

59. I now turn to consider, in broad terms, the *American Cyanamid* principles that apply to proprietary injunctions.

60. First, there must be a serious issue to be tried. As explained above, this is essentially the same merits threshold that applies in freezing injunction applications.

61. Secondly, if there is a serious issue to be tried, the court must consider whether the balance of convenience lies in favour of granting the relief sought. That involves consideration of the efficacy of damages as an adequate remedy, the adequacy of the cross-undertaking as to damages, and the overall balance of convenience, including the merits of the proposed claim.

Worldwide freezing injunction

62. Before turning to whether the merits gateway has been met, it is important to stress that this should not involve a mini trial of conflicting evidence.

63. It seems to me that the starting point here is to see what the contemporaneous documents show.

64. The corporate documents for Ready Gibraltar prepared by Eli Beniso, a partner at Hassans, and Hassans' corporate service provider, Line Group, state that the shares in Ready Gibraltar are owned by Ms Macedo. There is no trust instrument stating that she is holding them for anyone else. Mr Beniso, however, states as follows at paragraph 15 of his first affirmation that:

> "*Given the potential regulatory issues in the United States of America of Ready US directly owning the GibCo, and to expedite its incorporation, it was agreed that the shares of the GibCo would be held 50% by Ms Macedo and 50% by [Applicable Limited] effectively as bare trustees/nominees for Ready US…*"

65. Further, Mr Beniso states that Ms Macedo and Applicable Limited were only chosen by Ready US as trustees to hold the shares in the Gibraltar company as:

> "*…this was the best structure for Ready US and its stakeholders from a regulatory perspective and for the purposes of expediting the set-up of the Gibraltar company…*"

66. In the event, the shares that were intended to be held by Applicable Limited were held by Denarius, and these were later transferred to Ms Macedo for no consideration.

67. It is also worth observing at this point that the letter of engagement issued by Hassans and the services agreement with Line Group are addressed to Ms Macedo and Denarius. In a second affirmation, however, Mr Beniso states that the letters of engagement were only addressed to Ms Macedo and Denarius as authorised representatives of Ready US. Further, he explains that he has acted for Mr Gilo, Mr Gilo's partner, and related entities since 2016, and that he only became involved in this structure because of his relationship with Mr Gilo.

68. The 2022 GFSC Controller Form filed by Hassans with the GFSC, refers to Ms Macedo as the sole registered controller and ultimate beneficial owner of Ready Gibraltar.

69. When the change of ownership from Ms Macedo to Diecixi took place in 2024, a further Controller Form filed with the GFSC confirming that no change in ultimate beneficial ownership or control had taken place.

70. In his second witness statement, Mr Beniso states that he was not personally directly involved in these regulatory filings, other than on the Denarius front, and that this was dealt with by his colleagues Aaron Payas and Jeremy Requena in the Hassans FinTech department.

71. In his second witness statement, Mr Gilo states that when completing or assisting to complete forms for the GFSC on Denarius' behalf, he did not realise or appreciate that these documents required or sought identification of who the ultimate beneficial owner of Ready Gibraltar was. Further, he states that it was not his intention to mislead the GFSC, and that his understanding at the time was that the forms sought a declaration of shareholding in Ready Gibraltar as opposed to disclosure of its ultimate beneficial ownership.

72. Mr Ramsden said that Mr Gilo's evidence was extraordinary, and if truthful an exercise in self-ridicule, as the GFSC Controller Form clearly refers to ultimate beneficial ownership at various points. Further, he pointed out that these forms were completed with the assistance of Hassans, and that as a result on 20 March 2025, the Defendants' lawyers had written to Mr Payas at Hassans requesting confirmation that all declarations and representations made by Hassans to the GFSC and to the Gibraltar Companies Registry were to the best of his knowledge and belief, complete and truthful. Despite a chasing letter dated 24 March 2025 emphasising the importance of receiving this information in time for this hearing, there has been no response to that letter from Mr Payas.

73. On the face of it, therefore, the 2022 and 2024 Controller Forms filed with the GFSC, and prepared with the assistance of Hassans support the Defendants' position.

74. Further to these documents, John Azzopardi has filed a witness statement dated 27 March 2025. Mr Azzopardi is a Trust and Estate Practitioner and UK Chartered Tax Adviser, and he has worked at RSM Gibraltar Limited, a regulated financial services firm in Gibraltar, since 2013. Mr Azzopardi

states that he was appointed as a director and MLRO of Ready Gibraltar in 2022, to provide independent directorship and compliance oversight in accordance with GFSC requirements and expectations for Virtual Asset Service Providers. He confirms that he has never been made aware of any involvement of Ready US (whether legal, beneficial or operational), Mr Bennahum, Mr Gilo, or any of the Claimants. Further, he states that as well as the documents showing that Ms Macedo is the sole ultimate beneficial owner of Ready Gibraltar, her conduct throughout has is in his view been consistent with that position.

75. Mr Bennahum has filed three witness statements in which he traces the corporate history of the project. He says that Ms Macedo was for some years his trusted employee, and that it is not credible that she would have been given 100% interest in Ready Gibraltar for no consideration. Relying on these and further witness statements, and various exhibits filed by the Claimants, Mr Azopardi said that Ms Macedo's claims were easily rebuttable as they show Ready Gibraltar could be seen to be a Ready US creation. He said that they show that Ready US funded Ready Gibraltar and that Ms Macedo was accountable to Ready US. He also referred to discussions between Ms Macedo and Ready US about her salary and the tokens she would get, and which he submitted also supported the Claimants' case. Further, he said that there was no merit in Ms Macedo's claims that Ready US was a worthless company when she herself was trying to sell it for US$85 million in October 2024.

76. Mr Azopardi referred to a number of documents, many dating back to before August 2022, which show that Ready US was at that time behind the token project, including selecting a jurisdiction (originally BVI and then Gibraltar) for the token issuance.

77. In response, Ms Macedo says that the relationship between the parties evolved over time, that Ready US's initial investment of US$ 8.5 million was unsuccessfully invested in failed apps, and that the only IP developed by Ready US relates to these apps and have limited or no commercial value.

Further, she says that Ready US did not develop the launch of the token, and that she took over the project. She states that she raised approximately US$2.98 million using pre-seed Simple Agreements for Future Tokens (SAFTs) from March 2022, and that the token was made using open-source code compiled by smart contract developers engaged and paid for by Ready Gibraltar. Further, she states that the $PLAY web3 ecosystem was also developed at her direction by smart contract developers and web designers engaged and paid for by Ready Gibraltar, which meant that the whole ownership structure changed, and that it had nothing to do with Ready US.

78. Mr Ramsden submitted that the project changed from ownership to entitlement to tokens, as reflected in the IP Agreement and Token Agreements, executed in August 2022. He said that this represented an important turning point in the relationship between the parties.

79. I should add that the Defendants also rely on an exchange between Ready US's attorney and the judge in the Delaware proceedings. In the transcript setting out this exchange, Ready US's attorney informed the judge that Ready US and Mr Bennahum do not have any direct or indirect ownership of Ready Gibraltar. Mr Bennahum states that this exchange must be seen in context. According to him, all that Ready US's attorney is saying is that he does not have an interest in Ready US, and that Ready US is not on Ready Gibraltar's shareholder list, nor does it own Diecixi, directly or indirectly. I find this explanation, especially insofar as it refers to Ready US, rather unconvincing given Ready US's claims.

80. The Claimants devoted much of their energy to witness statements and submissions seeking to satisfy the court about the merits of their case. This, however, is not a mini trial. At this stage, however, the merits threshold is a low one and one that is easily crossed. Despite the many obvious challenges that the Claimants face in the light of the contents of the corporate and regulatory documents referred to above, as well as the evidence of Mr Azzopardi, that low threshold has in my view been met.

81. Moving on to other aspects of the application, which in my view is where the real focus should be placed.

82. If the matter is approached through the prism of a freezing injunction, the Claimants next need to show that there is a risk of dissipation. To determine this question, the court applies an objective test taking into account all the facts of the case cumulatively, as this exercise is a highly fact specific one. Solid and forward-looking evidence is required as risk is an inherently forward-looking concept. Suspicion, fear, speculation are not enough.

83. The main arguments deployed by the Claimants in relation to this part of the application are contained in paragraphs 226 to 270 of Mr Bennahum's first witness statement, and they broadly cover the following points:

    (1) Ms Macedo breached the trust arrangements of the shares.
    (2) Ms Macedo breached the business mandate from Ready US.
    (3) A deceptive course of conduct.
    (4) False promises.
    (5) Ms Macedo (via Ready Gibraltar) sought to misappropriate Ready US IP.
    (6) The Defendants had to be compelled by injunctive relief in Delaware.
    (7) Failure to give undertakings.
    (8) High mobility of digital assets and lack of transparency on digital assets.
    (9) Ms Macedo's continued evasiveness.

84. The first, second and third of these points revolve around the Claimants' case on the merits concerning Ms Macedo's role in Ready Gibraltar, as already outlined above. In my view, this is not solid and forward-looking evidence on risk of dissipation. Further this is all highly disputed, and Ms Macedo has her own version of events, supported by corporate and regulatory documents as outlined above, and the evidence of Mr Azzopardi.

This is not a case where the merits are so overwhelming that they point to a risk of dissipation, especially given the context of this case.

85. The Claimants also rely on Ms Macedo's transfer of her shares in Ready Gibraltar to Diecixi, to support their claim that she is acting deceptively, especially as this happened a few days before the launch of the Ready Gibraltar tokens in December 2024.

86. Ms Macedo says that the change in shareholding represents nothing more than legitimate tax planning, arranged with the assistance of Hassans. Mr Beniso has stated in his second affirmation that he did not personally draft nor review any documents in relation to this transfer of shares, and that this was done by a colleague of his. Further, he states that he introduced Ms Macedo to a company formation agent in Malta who dealt with the setting up of Diecixi in Malta.

87. To my mind, it makes no sense that Ms Macedo would use Hassans, and Mr Beniso, if nothing else as a point of contact at that firm, to assist her dissipate assets. As Mr Beniso has stated in his witness statements, Mr Gilo has been a client of his since 2016 and he has actively managed his personal affairs. Further, we are concerned with sophisticated structures, and it is not uncommon for changes to be made to structures for tax planning, or other legitimate reasons at key stages in a transaction.

88. Ms Macedo and Diecixi have also confirmed that they have no intention of redomiciling Ready Gibraltar, and that Gibraltar was purposely chosen as a leading cryptocurrency and digital assets hub with a clear regulatory and legal framework.

89. The fourth point refers to false promises on the part of Ms Macedo by failing to settle the dispute on the eve of the launch of the project by handing over the tokens as promised, and at the same time terminating the Token Agreements. This, however, goes back to the dispute between the parties

over ownership of Ready Gibraltar and their conduct around that, but it is not forward-looking evidence of risk of dissipation.

90. The fifth and sixth point refers to Ms Macedo's attempts to misappropriate Ready US's IP, hence the Delaware proceedings.

91. As stated above, the TRO is narrow in scope and the judge did not express any criticism of Ready Gibraltar in his ruling other than to say that Ready US had presented a "*colorable claim…based on the defendant's conduct over the last week*". The judge said that all that he was doing was giving a: "*…down and dirty ruling on the TRO, given the time constraints and the dispute of facts in the case.*" Further, the judge took up Ready Gibraltar's offer to return the original source code, or at least segregate it, which shows Ready Gibraltar coopering with the court. Whilst the judge returned access to the domain to Ready US, he did not allow it to control these domains whilst the TRO remained in place.

92. The seventh point refers to Ms Macedo's failure to provide undertakings as requested prior to these proceedings being commenced. It seems that these undertakings were largely in the terms of the order granted, and given the underlying dispute, Ms Macedo's position in that regard is not surprising.

93. The eight point refers to the high mobility of digital assets, which would make the tracing of money more difficult than with traditional banks. Mr Bennahum said that this was something that the court should be able to take judicial notice on.

94. Mr Ramsden said that there is a clear and immutable record for transactions on the blockchain as the Claimants now have information in relation to the relevant wallets, just as it would with fiat currency.

95. On the basis on the limited material before the court on this point, the exceptionality of digital assets appears to have been overstated by the Claimants, especially now that they have details about the relevant wallets.

In any event, the allocation of these digital assets is necessary to ensure that the business can function, and the court needs to be alive to the business context in which the application falls to be determined, and which I deal with further below when addressing the third limb of the test.

96. The ninth point is continued evasiveness. This does not take matters further as it is largely wrapped up with the Claimants' analysis of the facts, as referred to previously, and to the fall out between Ms Macedo and the Claimants.

97. Pulling everything together, I do not consider that the Claimants have presented solid evidence that there is a real risk of dissipation, either in relation to each of the points made by them separately, or taking these points cumulatively.

98. Even if I am wrong about risk of dissipation, I do not consider that the third limb of the test, namely the just and convenient criterion, is satisfied, having regard, amongst other things, to the effect of granting, or not granting, the order.

99. Mr Azopardi pointed out that the order does not freeze Ready Gibraltar's cash assets, and that the order provides a mechanism to release tokens, which is fair to all sides.

100. Ms Macedo, however, has explained that the only reason she wants to unfreeze the tokens is to allow Ready Gibraltar to continue to operate. As she has explained, the tokens are the lifeblood of Ready Gibraltar's business, and they serve the function that cash reserves would in a more mature business. They are critical to the day-to-day operations, spanning from staff and contractor payments to promotional and marketing activities, and partnerships with certain investors. Although I provided for a carve out of 15 million tokens following the variation application, that was just a temporary measure pending this return date. In any event, this represents around 1.5% of the total circulation of the tokens and on the evidence before

the court, my view is that this does not allow Ready Gibraltar to trade normally. I have considered whether it might be appropriate to allow Ready Gibraltar to trade a larger number of tokens with the court's permission, which could ensure the court's continued involvement in the matter. Taking everything into account, however, I do not consider that this is the just and proper course in this case.

101. Ms Macedo has said in her latest witness statement that the value of the tokens has crashed since proceedings were commenced by Ready US. She states that following the TRO, the value of the tokens fell to US$43 million, and it has now plummeted to US$3.4 million. This has an effect not just on Ready Gibraltar, but also on other token holders, currently standing at 19,000 wallets.

102. Further, Ms Macedo explains that four out of eight staff members, mainly engineers and product development professionals, have been dismissed since the order was made originally on 4 February 2025.

103. Ms Macedo has also confirmed that she is in regular dialogue with the GFSC regarding these proceedings, and as stated above, she has no intention of redomiciling Ready Gibraltar. Further, Ms Macedo's co-director, is an independent Gibraltar based professional, Mr Azzopardi. This all provides an additional level of scrutiny of Ready Gibraltar's corporate governance.

104. Even if the freezing injunction were to remain in place, it would be subject to the ordinary and proper course of business dealings exception. That is designed to ensure that a freezing order does not operate oppressively and that defendants are not hampered in their ordinary business dealings any more than is absolutely necessary. That, it seems to me, would allow the tokens to be traded to a large extent.

105. In response, the Claimants have filed the second witness statement of Scott Rupp. Mr Rupp states that while Ms Macedo seeks to blame Ready Gibraltar's economic position on the Claimants, he refers to market factors

that have played a central role in the current value of the token, and which he says are completely unrelated to these proceedings.

106. Whilst there may be many reasons for the drop in value of the tokens, the evidence before the court suggests that these proceedings are a factor in that regard, and that if the order continues, the effect will be to denude Ready Gibraltar of its assets at a rapid rate. The tokens are crucial to the ability of Ready Gibraltar to continue to operate, and that the order's aim, which is the preservation of assets is having the opposite effect, as it is not properly fashioned for the present crypto token context. An example of this, as referred to by Ms Macedo is the loss of a possible partnership with a world-renowned gaming and entertainment company.

107. Balancing out all these factors leads me to the conclusion that it is not just and convenient to allow the order to stand.

108. There is a further reason why it is not just and convenient to allow the order to stand.

109. The duty to make full and frank disclosure in applications made without notice or on short notice, as in this case, is well known. The principles which govern that duty, and which are recognised by numerous authorities, are not in dispute.

110. The applicant must make full and fair disclosure of all the material facts to the court, and this includes not only the material facts known to the applicant but also to any additional facts which he would have known if he had made such inquiries: *Brink's Mat Ltd v Elcombe* [1988] 1 WLR 1350.

111. Failure to disclose a material fact will sometimes require the immediate discharge of an order, although the court has a discretion to continue the injunction or impose a fresh injunction despite a failure of disclosure: *National Bank Trust v Yurov* [2016] EWHC 1913 (Comm).

112. In the present case, the Defendants have provided evidence showing that Ready US was non-compliant with its statutory filing obligations as from 1 March 2023, owing US$210,098.53 in unpaid franchise taxes. As from 1 March 2024 it was in administrative dissolution, and it was then declared void as a matter of Delaware law on 1 March 2025. This appears to be equivalent to a company being struck off the register of companies in Gibraltar and then dissolved.

113. At the time the Claimants applied for this injunction, therefore, Ready US was in administrative dissolution. Since this was raised by the Defendants, the Claimants have reinstated Ready US. That, however, may well cure Ready US's ability to maintain these proceedings, but it is not an answer to the non-disclosure, which in my view represents a significant omission on the part of the Claimants.

114. The application was brought on the basis that that Ready US was a thriving web3 or crypto company, which is at odds with its corporate status since 1 March 2024 until recently. The Defendants say that this accords with the fact that Ready US has not developed or released a functioning product since 2021, it has no capital, no revenue and no employees. Further, it is consistent with the agenda dated 11 June 2024 for a Ready US meeting, which Mr Bennahum disputes authorship of, and which the Claimants did not provide the court with either. This states insofar as is material, as follows:

> "*Token IP*
>
> - *IP created for READYgg was funded by token sales conducted by Gibraltar.*
> - *The work was original, starting from scratch and didn't inherit American IP.*
> - *No US employees worked on the token IP.*
> - *Three people from Canada, two of whom are engineers, contributed to the token IP.*
> - *The rest were all hired and contracted directly from Gibraltar.*
>
> …

Conclusion

- *There's no evidence benefit to holding the Delaware entity open. It creates a distraction and will eventually run out of capital. Should be wound down.*
And we all align to ensure token listing goes above expectations."

115. In his third witness statement Mr Bennahum tried to lay the blame for Ready US's corporate defaults at Ms Macedo's door. Mr Bennahum states that the relevant Claimants had not received notification from Ready US's registered agents, United Corporation Services, Inc. that there were any issues with lack of corporate filings or any defaults. He then states that the reason for this is because Ms Macedo was the registered point of contact for Ready US's corporate filings, and that she was the person receiving reminders and communications, which she failed to notify them of. Further, he states that whilst in February 2025, he updated Ready US physical mailing address, he was not aware that Ms Macedo remained listed as the primary electronic contact.

116. The email exhibited by Mr Bennahum from United Corporation Services, Inc. in response to his request about Ready US's point of contact refers to the tax contact as Ms Macedo and states: "*original notices are sent by MAIL ONLY, we will send reminder emails if not filed*".

117. The updated address referred to by Mr Bennhum is his Quebec address, as the Defendants' lawyers established, and which he does not refer to in his statement. This seems to suggest that the relevant notices would have been addressed to Ms Macedo, who had by that time moved to Portugal, but sent to Mr Bennahum's home address.

118. A witness statement was also provided by Bradley Chernin, a partner at Covington & Burling LLP, lawyers for Ready US. Whilst he states that Ready US was designated as void as from 1 March 2025, he does not refer to the fact that Ready US was in administrative dissolution as from 1 March 2024, which is relevant to the Delaware proceedings. Further, Mr Chernin states that his understanding why this lapse happened is because Ms Macedo

was listed as the contact person by Ready US's Delaware agent, but he does not address this further, and only appears to be repeating what he has been told by his client in that regard. He then goes on to say that the position has now been rectified and that only US$5,656 and not US$210,000 was outstanding in respect of franchise taxes.

119. The evidence presented by the Claimants on this issue is therefore far from impressive, and raises more questions than it answers. In any event, it does not adequately excuse the non-disclosure.

120. Finally, even if Mr Bennahum did not know about Ready US's corporate status, as he said, that does not make the position any less acute. It is something that he should have known about as Ready US's CEO until July 2024, and again since December 2024, and it is information that should have been fairly presented to the court by the Claimants, in particular Mr Bennahum as the CEO of Ready US, and Mr Gilo as Chairman of the Ready US board. In my view, this represents material non-disclosure, and the starting point, therefore, is that the order should also be discharged for this reason.

121. Whilst the court retains a discretion to continue or regrant the order even where there has been such a failure, for all the reasons set out above, I do not consider that this is a case where the order should be re-granted in any event. The non-disclosure only serves to fortify me in that conclusion.

Proprietary injunction

122. As I have already said, I do not consider that the proprietary injunction should be allowed to dominate the picture given the many weaknesses in the Claimants' proprietary claim. In any event, the outcome is the same even if the application is considered through that lens.

123. As stated above, the merits threshold for a proprietary injunction is in practice the same as for a freezing injunction, and I am satisfied that there is at least a serious issue to be tried.

124. The court, however, must then consider whether the balance of convenience lies in favour of granting the relief sought. This involves consideration of the efficacy of damages as an adequate remedy, the adequacy of the cross-undertaking as to damages, and the overall balance of convenience, including the merits of the proposed claim.

125. I am not satisfied that the balance of convenience lies in favour of granting relief in furtherance of the Claimants' asserted proprietary rights. First, the adequacy of damages as a remedy is diminished because of the effect of the order, as explained above. As for the sufficiency of the cross-undertaking as to damages, the principal Claimants are all foreign parties without assets in Gibraltar and are not blue-chip multi-national companies. In this case, the only claimants within the jurisdiction are Applicable Limited and Denarius Limited, which Mr Beniso states is wholly owned by Line Trust Corporation Limited as trustee of The RND Family 2014 Settlement, a discretionary trust settled by Mr Gilo's wife. This is therefore a case where the starting point would be that fortification is appropriate.

126. In any event, for all the reasons set out above, the overall balance of convenience firmly inclines against the order remaining in place.

Disposition

127. The order granted on 4 February 2025, and varied on 20 February 2025, is hereby discharged.

128. The Defendants have indicated that if the order is discharged, they will be asking for costs on an indemnity basis. Due to time constraints, I will hear arguments on costs after the handing down of this judgment at a further short hearing.

John Restano

Puisne Judge

Date: 17 April 2025