

AUSTRALIA / JUDGMENT

CXF Development Pty Ltd v Boill Holding (Aust) Pty Ltd

[2026] NSWSC 1079**COURT**

Supreme Court

DECIDED

08 September 2026

BEFORE

Richmond J

CASE / FILE NUMBER

2025/00242639

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Before:	Richmond J
Decision:	See paragraph [54]
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Legislation Cited:	Conveyancing Act 1919 (NSW) s 37A Uniform Civil Procedure Rules 2005 (NSW) rr 25.11, 25.14(4)–(5)

Cases Cited:	Ballard v Brookfield Australia Investment Ltd [2013] NSWCA 82 Brimaud v Honeysett Instant Print Pty Ltd (1988) 217 ALR 44 Cardile v LED Builders Pty Ltd (1999) 198 CLR 380; [199] HCA 18 Commonwealth Bank of Australia v Saleh [2005] NSWSC 843 Filippini v Keystone Asset Management Ltd (Recs and Mgrs Apptd) (In Liq) (2026) 316 FCR 159; [2026] FCAFC 71 Golden Rain Development Pty Ltd v Owners of Strata Plan No 97938 [2026] NSWCA 135 Goumas v McIntosh [2002] NSWSC 713 Hu v Green Estate Australia Pty Ltd [2026] NSWCA 170 Liu v The Age Company Ltd (2016) 92 NSWLR 679; [2016] NSWCA 115 National Australia Bank Ltd v Human Group Pty Ltd (No 2) [2020] NSWSC 1900 Patterson v BTR Engineering (Aust) Ltd (1989) 18 NSWLR 319 Siebe Gorman & Co Ltd v Pneupac Ltd [1982] 1 WLR 185 Super Vision Resources Ltd v AC Holdings Co Pty Ltd [2020] NSWCA 244 Warringah Shire Council v Industrial Acceptance Corp (Supreme Court (NSW), McLelland J, 22 November 1979, unrep)
Texts Cited:	P Biscoe, Freezing and Search Orders (3rd ed, 2023, LexisNexis)
Category:	Procedural rulings
Parties:	Oriental Management Pty Ltd (First Applicant) Yida Qiu (Second Applicant) Yizhen Qiu (Third Applicant) CXF Development Pty Ltd (First Respondent) Juris Chamber Lawyers (Second Respondent) Proceeding 2025/00242639 CXF Development Pty Ltd (Plaintiff) Boill Holding (Aust) Pty Ltd (First Defendant) Jian Huang (Second Defendant) Dongfang Qiu (Third Defendant) Oriental Management Pty Ltd (Fourth Defendant) Yida Qiu (Fifth Defendant) Yizhen Qiu (Sixth Defendant)
Representation:	
Counsel:	P Flynn SC / H Zhu (Applicants/Fourth, Fifth and Sixth Defendants) P Lonergan (First Respondent/Plaintiff)
Solicitors:	Herbert Smith Freehills Kramer (Applicants/Fourth, Fifth and Sixth Defendants) Kammoun Sukari Lawyers (First Respondent/Plaintiff)
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Publication restriction:	Nil

JUDGMENT

By an amended notice of motion filed in Court on 26 August 2026 (the motion), the fourth to sixth defendants (the applicants) seek a variation to existing asset preservation orders which were made by consent, and under which the amount of \$3,984,289 is held in the trust account of Juris Chamber Lawyers pending further order of the Court and the applicants have given undertakings to the Court not to sell or further encumber two properties, one being a unit in Pirrama Road, Pyrmont (Pyrmont property) and the other being a unit in Barangaroo Avenue, Barangaroo (Barangaroo property).

In essence, the orders sought by the motion are: (1) the fourth defendant, Oriental Management Pty Ltd (OMP), will grant a mortgage over the Pyrmont property to secure any obligation that the second defendant, Ms Huang, may have under any judgment in these proceedings, subject to a cap on the amount recoverable of \$5,234,289; (2) the release to OMP of all but \$1,000,000 of the \$3,984,289 held in the trust account of Juris Chamber Lawyers; and (3) the release of the applicants from the undertakings previously given in respect of the Pyrmont property and the Barangaroo property.

In support of the relief set out above, the applicants rely on the affidavit of Yida Qiu affirmed 20 August 2026, and the affidavits of Leon Chung, solicitor, affirmed 20 August 2026 and 25 August 2026. CXF, the plaintiff and respondent on the motion, relies on the affidavit of Ibrahim Kammoun, solicitor, affirmed 24 August 2026.

The claims in the proceeding

The proceedings are a claim by the plaintiff, CXF Development Pty Ltd (CXF), for the repayment of a loan of \$11 million it made to the first defendant, Boill Holding (Aust) Pty Ltd (Boill Australia), which was guaranteed by the two directors of Boill Australia, who are Ms Jian Huang (the second defendant) (Ms Huang) and her husband, Mr Dongfang Qiu (the third defendant) (Mr Qiu).

It is not in dispute that Boill Australia has made payments to CXF totalling \$13,007,123 under the loan agreement. What is in dispute is whether a principal amount of \$3,666,690 (plus accrued interest) remains outstanding. Boill Australia contends that it made further payments to CXF in excess of that principal amount such that CXF has been overpaid to the extent of \$1,080,000, whereas CXF contends that those payments were made under different loan transactions. Boill Australia has filed a cross-claim in respect of the alleged overpayment. The dispute is complicated by the impact of decisions in Chinese proceedings in respect of the other loan transactions relied on by CXF. CXF's solicitor estimates that the value of CXF's claim in respect of principal, interest and costs, if successful, will be some \$6.3 million.

The fourth defendant, OMP, is the trustee of the Huang Family Trust, a discretionary trust. The discretionary beneficiaries of that trust include Ms Huang and the two sons of Ms Huang and Mr Qiu, who are Mr Yida (Jason) Qiu (the fifth defendant) and Mr Yizhen (William) Qiu (the sixth defendant). Without intending any disrespect, I will refer to the fifth and sixth defendants by their first names.

OMP, Jason and William (being the applicants on the motion) are not parties to the loan agreement with CXF. Their joinder to the proceeding arose from Ms Huang's transfer of her 100% shareholding in OMP to Jason and William for a nominal amount, which CXF seeks to void pursuant to s 37A of the Conveyancing Act 1919 (NSW). It may be noted that the relief sought by CXF against OMP, Jason and William will not sound in any judgment debt or any other obligation against the applicants to pay a pecuniary amount; rather, CXF seeks only to restore to Ms Huang the shares in OMP which she previously held but have been transferred to her sons. In the defence, Ms Huang denies that s 37A applies, contending that OMP holds all its assets as trustee of the Huang Family Trust and that her shares in OMP were of no value.

Boill Australia, which is controlled by Mr Qiu and Ms Huang, has no apparent connection with the Huang Family Trust.

The existing interlocutory regime

At present, funds belonging to OMP (as trustee of the Huang Family Trust) in the amount of \$3,984,289 are held in the trust account of Juris Chamber Lawyers. OMP, Jason and William are also bound by undertakings not to encumber the Pyrmont property and the Barangaroo property. This came about in the following way.

On 25 June 2025, CXF was granted leave to file in Court a summons seeking a freezing order against Ms Huang, OMP, Jason and William. At the return of the summons on 30 June 2025, the Court noted (upon the plaintiff giving the usual undertaking as to damages) that OMP, Jason and William each gave an undertaking to the Court by that:

- a. they will not exchange any contract for the sale of either or both of the properties [##] and [##] Pirrama Road Pyrmont (the Properties) without first giving 14 days' notice in writing to the Plaintiff;
- b. they will not further encumber the Properties; and
- c. they warrant to the Plaintiff that the secured debt over the Properties is not and will not exceed more than \$5 million.

In November 2025, OMP exchanged a contract for the sale of one of the two properties in Pyrmont referred to in the previous paragraph, for \$13.75 million. In anticipation of completion of that sale, on 11 December 2025, CXF was granted leave to file in Court a notice of motion in seeking an order that part of the proceeds from the sale of the property be paid into a controlled monies account held jointly by CXF and OMP. On 11 December 2025, the Court ordered that:

5 Upon counsel for the plaintiff giving the usual undertaking as to damages, upon settlement of the sale of the Property [at ## Pirrama Road, Pyrmont] on 18 December 2025, the sum of \$5,234,289.00 from the sale proceeds be held in the trust account of Juris Chamber Lawyers (being the Fourth Defendant's conveyancing solicitor) pending further order of the Court.

On 19 December 2025, settlement of the sale of that property occurred, and the balance of the proceeds of \$13.75 million (after deduction of costs incidental to the sale) was distributed as follows: (a) \$5,234,289 to Juris Chamber Lawyers pursuant to the order of the Court on 11 December 2025 as set out at paragraph [11] above; (b) \$4,825,876.39 to Westpac Banking Corporation in satisfaction of the amount outstanding under a loan made by it on the security of a mortgage over that property; and (c) \$2,997,352.39 to OMP.

The directors of OMP, Jason and William, subsequently resolved that the amount of \$2,997,352.39 received by OMP would be distributed: (a) as to \$1,500,000, to Hygge Investment Lending Pty Ltd to discharge a loan which was secured by mortgage over another property owned by OMP; (b) as to \$1,000,000, to repay a loan to OMP by Ms Huang; and (c) as to \$500,000, to Allbright Law for payment of legal fees in connection with proceedings in this Court.

On 12 February 2026, OMP filed a notice of motion seeking an order for the release of the \$5,234,289 held in Juris Chamber Lawyers' trust account. At the hearing of the motion on 20 February 2026, the Court ordered by consent that:

1. Without admissions and without prejudice to any future application that may be made:

Upon the further undertaking to the Court of the fourth defendant that it gives the same undertakings to the Court as it gave on 30 June 2025 in respect of the property [##] Barangaroo Avenue, Barangaroo NSW 2000 (the Barangaroo Property), that is:

- a) The fourth defendant will not exchange any contract for the sale of the Barangaroo Property without first giving 14 days' notice in writing to the plaintiff;
- b) The fourth defendant will not further encumber the Barangaroo Property;
- c) The fourth defendant warrants to the plaintiff that it will pay the mortgage on the Barangaroo Property to Hygge Investment Lending Pty Ltd at settlement, which is anticipated to occur on 8 March 2026;
- d) The fourth defendant warrants to the plaintiff that the secured debt over the Barangaroo Property up until the mortgage is paid off will not exceed \$1,600,000.

1 Order 5 of the Court's Orders of 11 December 2025 be varied as follows:

"The sum of \$1,250,000 presently held in the trust account of Juris Chambers Lawyers be paid forthwith to the solicitors for the Fourth Defendant, with the remainder thereof to be held pending further order of the Court, upon condition that the said sum of \$1,250,000 be paid into the trust account of Allbright Law for the only purpose of payment of legal fees of the fourth defendant and its associated entities as deposed in the Affidavit of Zhou Fang sworn 20 February 2026."

In relation to that last order, the trust ledger of Allbright Law shows that \$1,250,000 was transferred to its trust account on 16 March 2026 (from the trust account of Juris Chamber Lawyers) and has been expended in meeting legal fees and disbursements, with the current balance of the funds in Allbright Law's trust account being \$199,610.93 (Exhibits 1–5). As a result of that transfer, the balance of the funds in the trust account of Juris Chamber Lawyers was reduced to \$3,984,289.

In summary, the position from 20 February 2026 to date has been that:

OMP, Jason and William undertake not to further exchange any contract for the sale of the Pymont property without first giving 14 days' notice in writing to CXF or to further encumber that property;

OMP undertakes not to exchange any contract for the sale of the Barangaroo property without first giving 14 days' notice in writing to CXF or to further encumber that property;

the undertaking by OMP, Jason and William in respect of the other property in Pymont has been overtaken by the consensual sale of that property in December 2025 and payment of part of the sale proceeds into the trust account of Juris Chamber Lawyers; and

Juris Chamber Lawyers holds \$3,984,289 in its trust account pending further order of the Court.

As for the balance of the proceeds of sale of \$13.75 million received in December 2025 which was not paid into trust, that amount has been completely expended in the payment of professional and conveyancing fees in connection with the sale of the property, on account of legal fees, and to discharge loan obligations by OMP.

Developments since 20 February 2026

The applicants submitted that in order to engage the Court's discretion to vary the orders presently in place, they must establish that there has been a material change of circumstances since the orders providing for the security and the partial release of funds were made in June 2025, December 2025 and February 2026: *Brimaud v Honeysett Instant Print Pty Ltd* (1988) 217 ALR 44 at 46 (McLelland J); *Ballard v Brookfield Australia Investment Ltd* [2013] NSWCA 82 at [11] (Ward JA).

The applicants rely on two matters as giving rise to a material change of circumstances. The first concerns procedural developments since 20 February 2026 in these proceedings (CXF Proceedings), and in a separate set of proceedings (2025/00187897) involving some of the same parties, including OMP (V2V Proceedings), which have caused OMP to incur significantly greater legal expenses than could reasonably have been anticipated at that time. OMP has been responsible for the legal fees of the defendants in the CXF Proceedings and also of the cross-claimants in the V2V Proceedings, who are OMP and Green Estate Australia Pty Ltd (Green Estate).

Green Estate is a wholly owned subsidiary of QZH Australia Pty Ltd (QZH) in which OMP holds a 70% shareholding. The other 30% shareholder in QZH is Mr Yuqing Hu (Mr Hu), who is also a director of CXF and the sole shareholder of CXF.

In the CXF Proceedings, CXF amended its pleading by way of an amended statement of claim on 19 March 2026, and Boill Australia filed a cross-claim on 1 May 2026. Due to the nature of the issues raised in the pleadings, the parties were granted leave to file a rejoinder (which was filed on 1 June 2026) and surrejoinder (which was not ultimately filed) to CXF's amended statement of claim. Provision was also made for the parties to serve further lay and expert evidence on the amended statement of claim.

In the V2V Proceedings, the hearing timeline has been significantly delayed and drawn out due to events occurring after 20 February 2026. As at that date, the V2V Proceedings had been set down for hearing over eight days in March and April 2026. On 24 March 2026, judgment was entered by consent in the primary claim in the V2V Proceedings. However, this left the cross-claim of Green Estate and OMP remaining to be heard. The claim of Green Estate under the cross-claim is against Mr Hu, a former director of Green Estate, in respect of the alleged misappropriation by him of almost \$20 million, and CXF is the second cross-defendant in that cross-claim as a knowing recipient of the misappropriated funds. Green Estate's claims, if successful, will benefit QZH (and OMP as the majority shareholder of QZH). The claim of OMP under the cross-claim against Mr Hu concerns alleged misrepresentations by Mr Hu and seeks to set aside an agreement under which shares in landholding companies were held on trust by OMP for Mr Hu.

On 26 March 2026, which was the fourth day of the hearing of Green Estate and OMP's cross-claim, the balance of the hearing days was vacated. Orders were subsequently made providing for amended pleadings and further evidence, and listing the matter for hearing over a further 11 days in August 2026. The resumed hearing was adjourned again after four days of hearing between 11 to 18 August 2026, to enable an expedited concurrent hearing on 21 August 2026 of leave to appeal and appeal from an interlocutory decision by the trial judge. The Court of Appeal granted leave and allowed the appeal, remitting the matter to the trial judge: *Hu v Green Estate Australia Pty Ltd* [2026] NSWCA 170.

Mr Leon Chung, a partner of Herbert Smith Freehills Kramer, commenced acting for the cross-claimants in the V2V Proceedings and for the defendants in the CXF Proceedings in April and May this year, respectively. His evidence is that OMP has paid, in total, legal costs and disbursements in respect of those proceedings since his firm became engaged of \$557,713.

The second matter relied on by the applicants as a material change of circumstances is that, on around 27 March 2026, Green Estate received from the Victorian State Revenue Office (VSRO) a land tax assessment for the 2025 year in the amount of \$655,062.50 and a land tax assessment for the 2026 year in the amount of \$1,280,462.50.

On 13 August 2026, the VSRO indicated to Green Estate that it proposed to take enforcement action for the amount due (including commencing winding up proceedings), following which, on 19 August 2026, Green Estate's solicitors negotiated a payment plan with the VSRO under which the amount due (which has now increased to \$2,054,697) is to be paid by eight monthly instalments of \$241,940 commencing on 31 August 2026.

This land tax liability of Green Estate arises from its grouping with other related companies which own land in Victoria and, while the fact that Green Estate had a liability for land tax was known, the size of that liability (in particular the increase for the 2026 land tax year) was not known until the assessments were issued on 27 March 2026.

The evidence is that Green Estate does not have independent sources of funding or cash reserves which would enable it to meet the outstanding land tax liability and requires an external capital injection in order to do so. OMP wishes to provide the necessary funds by way of an intercompany loan sourced from a release of the funds held in the trust account of Juris Chamber Lawyers to avoid enforcement action by the VSRO which would not be in OMP's interests as a 70% indirect shareholder.

In June 2026, there was email correspondence between Ms Huang and Mr Hu in which Ms Huang sought Mr Hu's agreement to the shareholders in QZH (being Mr Hu and OMP) each contributing the funds necessary to pay Green Estate's land tax liability, which was refused. Then in July and August 2026, there was protracted correspondence between the solicitors for OMP and CXF in which the former sought the agreement of the latter to the release of OMP's funds held in the trust account of Juris Chamber Lawyers to both fund a loan by OMP to discharge Green Estate's land tax liability and to pay OMP's legal fees for the CXF Proceedings and the V2V Proceedings.

This correspondence culminated in an offer by CXF's solicitors to OMP's solicitors by a letter dated 18 August 2026 to agree to a release of funds held in the trust account of Juris Chamber Lawyers on terms that: (a) \$1,992,732.04 is to be released for the sole purpose of being paid directly to the VSRO to discharge Green Estate's land tax liability; (b) OMP is to give first-ranking mortgages over both the Pyrmont and Barangaroo properties to CXF to secure any judgment in these proceedings against the first, second, third and/or fourth defendants together with interest and costs; (c) the balance of \$1,991,556.96 to remain in the trust account of Juris Chamber Lawyers pending further order or agreement; and (d) CXF would consider any further request for the release of funds for legal fees once evidence of the incurrence of those fees is provided.

It is apparent from CXF's offer that it does not oppose the release of funds to OMP to enable OMP to provide funds to Green Estate to meet its land tax liability and to enable OMP to meet its legal fees for the CXF Proceedings and the V2V Proceedings; rather, the disagreement is over the terms on which that should occur.

Submissions

The applicants submit that they were not aware, as at 20 February 2026, that the burden of paying Green Estate's land tax would ultimately be assumed by OMP, or that there would be a significant increase in legal fees being funded by OMP resulting from the procedural developments in the CXF Proceedings and the V2V Proceedings referred to above, and both constitute a material change of circumstances which justify an amendment to the security regime.

The applicants submit that the Court should exercise its discretion to provide an amended regime by making the following orders:

1. \$1,992,732.04 be released from the funds presently held in the trust account of Juris Chamber Lawyers (JCL) for the sole purpose of satisfying the outstanding land tax liability of Green Estate Australia Pty Ltd identified in the affidavit of Jason Qiu affirmed 20 August 2026 at paragraph 26, to be paid directly by JCL to the Victorian State Revenue Office.
2. The Fourth to Sixth Defendants be released from the undertaking noted in Notation 1b of the orders made by Slattery J on 30 June 2025 in respect of [##] Pirrama Road, Pyrmont NSW 2009.
3. The Fourth Defendant, within 14 days of these orders, grant in favour of the Plaintiff a registered first-ranking mortgage pursuant to the Real Property Act 1900 (NSW) over the properties at [##] Pirrama Road, in order to secure any amount which the Second Defendant may be required to pay the Plaintiff pursuant to any judgment in this proceeding, together with any interest and costs forming part of or payable pursuant to that judgment.
4. The sum of \$991,556.96 held in the trust account of JCL be released to the Fourth Defendant and paid by way of electronic funds transfer to the trust account of Herbert Smith Freehills Kramer.
5. The balance of \$1,000,000 to remain in the trust account of Juris Chamber Lawyers pending further order of the Court or agreement between the parties.
6. The Fourth Defendant be released from the undertaking in Order 1 of the orders made by Slattery J on 20 February 2026 in respect of [##] Barangaroo Avenue, Barangaroo NSW 2000.

The applicants contend that this proposed regime is supported by a number of matters which may be summarised as follows:

CXF will enjoy a superior security position on the applicants' proposed orders. This is because the only relief sought by CXF against OMP is the setting aside of the transfer of Ms Huang's shares in OMP to Jason and William. Should judgment ultimately be entered for CXF in the CXF Proceedings, that would not include any monetary sum payable by OMP but at most only against Boill Australia, Ms Huang and Mr Qiu. The funds currently held in the trust account of Juris Chamber Lawyers and the Pyrmont and Barangaroo properties are assets of OMP which would not be available to CXF to satisfy any judgment debt payable to it by another defendant.

Further, as OMP holds its assets as trustee of the Huang Family Trust they would not ordinarily be available to Ms Huang as a discretionary beneficiary in the absence of a distribution to Ms Huang. A fortiori they are not available to any person who is not a beneficiary of the Huang Family Trust, such as Boill Australia and Mr Qiu. Although CXF appears to assert in its submissions at paragraph [14(c)] that its claim against OMP involves a “tracing exercise of monies owed by the First, Second and Third Defendants”, it is not apparent, and no further explanation is provided in its submissions, as to what the “monies” referred to consist of or how they may be traced into OMP or its assets.

Under the substitute security proposed by the applicants, OMP would exercise its power as trustee to grant a mortgage over the Pyrmont property in favour of CXF securing any amount payable under any judgment by Ms Huang, who is a beneficiary of the Huang Family Trust (Mortgage). The Pyrmont property is presently unencumbered. The value of the Pyrmont property is between \$5,000,000 and \$5,500,000. The effect of the proposed Mortgage is that CXF would be secured to an amount which exceeds the amount of \$4,795,027 (including interest) presently claimed in its amended statement of claim. Although the applicants accept that the value of the Pyrmont property is less than the \$6,301,921.86 at which CXF’s solicitor values his client’s claim (including interest and costs) as at 1 July 2027, the purpose of the Court’s orders is not to provide a security for the entire amount of any future judgment, plus interest and costs, but only to prevent the frustration of its process through the illegitimate dissipation of assets which would otherwise be available to satisfy any judgment: *Cardile v LED Builders Pty Ltd* (1999) 198 CLR 380; [199] HCA 18 at [41]–[42], [51] (Gaudron, McHugh, Gummow and Callinan JJ); *Patterson v BTR Engineering (Aust) Ltd* (1989) 18 NSWLR 319 at 323 (Gleeson CJ); *Goumas v McIntosh* [2002] NSWSC 713 at [27] (Barrett J).

With above matters in mind, the revised security regime proposed by the applicants substitutes cash and undertakings in respect of property to which it seems CXF could not have any direct recourse to meet any judgment sum awarded in its favour, with an enforceable, first-ranking security exceeding the amount presently claimed against Ms Huang in these proceedings.

It is well accepted that where a freezing order is made, the defendants will generally retain an entitlement to use their assets for legitimate purposes including to pay their reasonable legal expenses and other business expenses bona fide and properly incurred in the conduct of their business. Those same considerations ought to apply by analogy where the form of order is not a typical Mareva injunction or order pursuant to r 25.11 of the Uniform Civil Procedure Rules 2005 (NSW) (UCPR), but a bespoke set of orders aimed at serving a similar function of freezing assets which might be used to meet a judgment. They are engaged in this instance.

OMP is entitled to fund the V2V Proceedings in an orderly manner so as to recover funds owed to Green Estate by CXF itself, and that will gainfully affect the value of OMP’s shareholding in QZH. To the extent that the plaintiff in the CXF Proceeding has an interest in the asset position of OMP, it is in the plaintiff’s interests that OMP be permitted to fund those proceedings. The present regime allows OMP to do so without risk to the plaintiff due to the Mortgage. CXF ought not be permitted to insist upon a security regime which would have the effect of hampering OMP’s

ability to fund the claim against CXF itself.

CXF submits that the current regime should remain unchanged for reasons which may be summarised as follows:

It is the settled practice that a substantive interlocutory order deliberately made will only be revisited on a material change of circumstances, or new material that could not reasonably have been put before the Court earlier: *Brimaud* at 46 (McLelland J). It is not in the interests of justice to permit a party to re-litigate a question resolved as a result of its own forensic choices: *Liu v The Age Company Ltd* (2016) 92 NSWLR 679; [2016] NSWCA 115 at [14] (Beazley P).

It is not in dispute that the OMP should be availed of funds held under a freezing order to meet its debts that have arisen: *Golden Rain Development Pty Ltd v Owners of Strata Plan No 97938* [2026] NSWCA 135 at [69] (Bell CJ). This, however, doesn't extend to debts of third-party entities. Further, an exception to an order restraining a company's assets does not permit those assets to be applied for the personal benefit of its directors: *Super Vision Resources Ltd v AC Holdings Co Pty Ltd* [2020] NSWCA 244 at [25]–[26] (McCallum JA).

Given the instalment arrangement agreed to by the VSRO, the winding-up urgency pressed by the applicants has been addressed and what remains is, at most, a monthly instalment obligation of a non-party (Green Estate), not OMP or the other applicants. Further to the above, the land tax liability was no surprise as the obligation to pay land tax is an annual event, and the 2025 and 2026 assessment notices were received by the applicants on 27 March 2026, which was almost five months before the motion was originally filed.

The present regime gives CXF 'by way of security': (a) \$3,984,289 in cash; (b) restraints over the Pymont property (which is unencumbered); and (c) restraints over the Barangaroo Property (also unencumbered). The applicants' proposed orders reduce (a) to \$1 million, remove (c) and substitute a mortgage over the Pymont property expressed to secure the sum owing to CXF under any judgment in these proceedings against the second defendant, but capped at \$5,234,289 (cl 2.3(a)). The only valuation evidence for the Pymont property is a one-page complimentary appraisal by a McGrath agent dated 28 November 2025, expressly given '[s]ite unseen', of \$5.0–\$5.5 million. Even if this was considered adequate evidence (which it is not), taking the appraised mid-range value and allowing costs of realisation, the net recoverable value of the proposed mortgage sits below the cap and below the likely judgment amount (if CXF is successful at final hearing). The applicants' evidence is silent as to why the undertakings regarding the Barangaroo property are required to be removed.

The applicants assert two purposes for the release of funds under the motion, i.e. Green Estate's land tax liability and legal fees. As to the first, even taken at its highest, the land tax liability no longer necessitates any release as Green Estate has elected to make payment under an instalment plan. The first instalment of \$241,940.63 falls due by 31 August 2026 and the final payment in April 2027. The most that purpose could ever justify is the staged payment of modest monthly amounts. As to the second asserted purpose, this requires evidence to substantiate the amount of the further legal fees which has not occurred.

Consideration

It is not in dispute that the existing orders which the applicants seek to vary are interlocutory orders of a substantive nature. The parties have proceeded on the basis that the rule of practice which applies to such orders is that stated by McLelland J in *Brimaud* at 46:

In the present case I am dealing with an interlocutory order of a substantive nature made after a contested hearing in contemplation that it would operate until the final disposition of the proceedings. In such a case the ordinary rule of practice is that an application to set aside, vary or discharge the order must be founded on a material change of circumstances since the original application was heard, or the discovery of new material which could not reasonably have been put before the court on the hearing of the original application:

His Honour had earlier said:

The overriding principle governing the approach of the court to interlocutory applications is that the court should do whatever the interests of justice require in the particular circumstances of the case. In giving effect to that general principle, and in recognition of the public and private interests earlier referred to, rules of practice have been developed in accordance with which the discretionary power of the court to set aside, vary or discharge interlocutory orders will ordinarily be exercised. Not all kinds of interlocutory orders attract the same considerations. For present purposes one may put to one side orders of a merely procedural nature (as to which see for example *Wilkshire & Coffey v Commonwealth* (1976) 9 ALR 325) and injunctions (or undertakings) made or given by agreement and without contest “until further order” (as to which see for example *Warringah Shire Council v Industrial Acceptance Corp* (unreported, SC(NSW), McLelland J, 22 November 1979).

In this passage, McLelland J notes that different principles may apply to interlocutory orders made by consent and not after a contested hearing. In his earlier decision of *Warringah Shire Council v Industrial Acceptance Corp* (Supreme Court (NSW), McLelland J, 22 November 1979, unrep), he said the following in relation to such orders:

The circumstances in which an interlocutory injunction may be granted or an interlocutory undertaking given may differ widely. However, where the parties agree upon the manner in which an application for interlocutory relief is to be disposed of and relief is granted pursuant to that agreement, whether by way of injunction or the acceptance by the Court of an undertaking, without any contest, any subsequent application for the variation of that relief must be approached on the basis of what justice requires as between the parties. In the normal case this will depend in large measure upon what was in their mutual contemplation at the time the original relief was agreed to.

His Honour added that where orders are made ‘until further order of the Court’:

In the absence of any countervailing circumstances and of any reference to the final hearing of the proceedings, I take this phrase to express the mutual contemplation by the parties that at some time pending the final hearing of the proceedings the question of whether the second defendant should continue to be restrained from selling or completing any contract of sale of its land might properly be submitted for determination by the Court, such determination to supersede the agreed undertakings.

In these circumstances, although in a technical sense the second defendant as the moving party has the onus of showing that the orders it seeks should be made, the question is in substance, whether the plaintiffs are entitled on ordinary principles to interlocutory relief restraining the second defendant from selling or completing any contract for the sale of its land.

In the present case, the prior orders were made by consent without a contested hearing. Interlocutory orders made by consent can recognise an agreement between the parties which operates as a contract or merely that the parties do not object to the orders being made (in which case there is no contract between them). In the former case, the contract may restrict the circumstances in which the orders may be varied, whereas in the latter case, the orders may be varied in the same circumstances as any other order that is made by the court without the consent of the parties: *Siebe Gorman & Co Ltd v Pneupac Ltd* [1982] 1 WLR 185 at 189 (Lord Denning); *Abraham v Abraham* [2012] NSWSC 254 at [12] (Ball J).

CXF did not submit that the prior orders reflected a contract between the parties nor does the evidence suggest that this is so. That there was no contract is supported by the terms of the orders themselves, which provided that the funds were to be held in the trust account of Juris Chamber Lawyers pending further order of the Court and the undertakings regarding the Barangaroo property were ‘without admissions and without prejudice to any future application that may be made’.

In circumstances where consent orders are made without a contested hearing and do not reflect a contract between the parties, the test stated by McLelland J in *Warringah Shire Council* may be less demanding than that which applies to orders made following a contested hearing. However, I will proceed on the basis, as the parties did, that it is necessary for the applicants to establish a material change in circumstances in order to engage the Court’s discretion to vary the existing orders. If that hurdle is met, the general principle to be applied is that the orders can be varied if that is what the interests of justice require in the circumstances of the case.

I am satisfied that the matters referred to at paragraphs [19]–[28] above constitute a material change of circumstances since the existing orders were made on 20 February 2026. In particular, the CXF Proceedings and the V2V Proceedings have become significantly more complex since 20 February 2026, with a consequential increase in legal costs in a way which could not have been foreseen at that time. OMP is the entity which is funding the legal costs for both sets of proceedings, the latter on the basis that if it and Green Estate’s cross-claim is successful, that will benefit OMP as an indirect 70% shareholder in Green Estate (in addition to its claim to set aside agreements with Mr Hu).

I am also satisfied that the interests of justice require the variation of the orders made on 20 February 2026. First, the existing orders are in the nature of asset preservation orders which are a drastic remedy which must not be granted lightly: *Cardile v LED Builders Pty Ltd* (1999) 198 CLR 380; [1999] HCA 18 at [51] (Gaudron, McHugh, Gummow and Callinan JJ). To obtain such orders at a contested hearing, CXF would need to establish three matters: (a) that it has a good arguable case in these proceedings; (b) that having regard to all the circumstances there is a danger that the actual or prospective judgment debt will be wholly or partly unsatisfied because any of the events set out in UCPR r 25.14(4) or (5), as applicable, might occur; and (c) if those two requirements are met, that it is in the interests of justice to grant the order, bearing in mind, among other things, the balance of convenience and that the jurisdiction is to be exercised with a high degree or caution: see *P Biscoe, Freezing and Search Orders* (3rd ed, 2023, LexisNexis) at [2.52].

CXF has chosen not to address, directly, any of these matters and it is not clear on the evidence before the Court on this application that they are satisfied.

As McLelland J said in *Warringah Shire Council*, while the applicants are technically the moving party, in substance CXF bears the burden of establishing why asset preservation orders should be made against the applicants. That reflects the general rule that where a plaintiff obtains an interlocutory injunction by consent which by its nature continues until further order of the Court, it remains the burden of the plaintiff to satisfy the Court that the injunction should be continued: *Commonwealth Bank of Australia v Saleh* [2005] NSWSC 843 at [11] (Palmer J). CXF has not discharged, or attempted to discharge, that burden.

Second, the interests of justice should have regard to what was in the contemplation of the parties when the existing orders were made in February. The dispute between the parties in the CXF Proceedings and the V2V Proceedings has expanded in a manner they could not have reasonably contemplated in February, with the consequential increase in legal costs which OMP is required to fund. Further, the amount of Green Estate's land tax liability was not known at that time nor that it would be OMP which would be required to fund it by making a loan to Green Estate.

Third, it is in the interests of justice that OMP be permitted to use its assets for the purpose of funding both the legal costs of the CXF Proceedings and the V2V Proceedings and to make a loan to Green Estate to fund payment of the land tax liability. As to the first, the funding of the CXF Proceedings and the V2V Proceedings will benefit OMP both directly (as it is a party in both) and indirectly (to the extent that Green Estate's claim is successful). In my view, it is not just for OMP to be constrained in the funding of those proceedings by a regime which benefits CXF and will hamper OMP's prosecution of its claims against CXF.

As to the second purpose, it is clear that the land tax must be paid to avoid enforcement action (and in full now, to avoid the further accrual of interest) in order to preserve Green Estate's ability to continue with its cross-claim in the V2V Proceedings which, if successful, would benefit OMP (as indirect 70% shareholder).

Both purposes involve a legitimate use of OMP's assets. An asset preservation order should only be directed at preventing the illegitimate dissipation of assets that would otherwise be available to meet any judgment: *Goumas v McIntosh* [2002] NSWSC 713 at [27] (Barrett J); *National Australia Bank Ltd v Human Group Pty Ltd (No 2)* [2020] NSWSC 1900 at [107]–[109] (Henry J).

Fourth, the applicants' proposed variation to the orders will give CXF a mortgage over the Pymont property to secure the amount of any judgment obtained against Ms Huang in the CXF proceedings which will improve CXF's position. The existing orders, by their nature, do not provide it with any security over OMP's assets. Further, if as the applicants contend, OMP holds all its assets as trustee of the Huang Family Trust (a discretionary trust), *prima facie*, the only way in which the assets of OMP would be accessed by CXF if successful in these proceedings would be through enforcement of the judgment against Ms Huang following her bankruptcy, which would not be straightforward: see the discussion in *Filippini v Keystone Asset Management Ltd (Recs and Mgrs Apptd) (In Liq)* (2026) 316 FCR 159; [2026] FCAFC 71 at [36]–[80] (Beach, Button and Younan JJ).

Conclusion

For the reasons set out above, I accept the submission of the applicants that it is in the interests of justice to vary the existing asset preservation orders substantially in the manner set out at paragraph [33] above.

The parties did not make any submissions on costs. In my view, the appropriate order is that the costs of the motion should be costs in the cause, but if any party seeks a different order as to costs, they may exercise the liberty to apply.

The Court will make the following orders:

\$1,992,732.04 be released from the funds presently held in the trust account of Juris Chamber Lawyers (JCL) for the sole purpose of satisfying the outstanding land tax liability of Green Estate Australia Pty Ltd identified in the affidavit of Jason Qiu affirmed 20 August 2026 at paragraph 26, to be paid directly by JCL to the Victorian State Revenue Office.

The Fourth to Sixth Defendants be released from the undertaking noted in Notation 1b of the orders made by Slattery J on 30 June 2025 in respect of [##] Pirrama Road, Pymont NSW 2009.

The Fourth Defendant, within 14 days of these orders, grant in favour of the Plaintiff a registered first-ranking mortgage pursuant to the Real Property Act 1900 (NSW) over the properties at [##] Pirrama Road, in order to secure any amount which the Second Defendant may be required to pay the Plaintiff pursuant to any judgment in this proceeding, together with any interest and costs forming part of or payable pursuant to that judgment, in the form of the draft mortgage forming Annexure D to the affidavit of Leon Chung dated 25 August 2026.

The sum of \$991,556.96 held in the trust account of JCL be released to the Fourth Defendant and paid by way of electronic funds transfer to the trust account of Herbert Smith Freehills Kramer.

The balance of \$1,000,000 to remain in the trust account of Juris Chamber Lawyers pending further order of the Court or agreement between the parties.

The Fourth Defendant be released from the undertaking in Order 1 of the orders made by Slattery J on 20 February 2026 in respect of 503/25 Barangaroo Avenue, Barangaroo NSW 2000.

Costs of the Amended Notice of Motion filed 26 August 2026 be costs in the cause.

Liberty to apply.

Amendments

09 September 2026

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Typographical amendments to paragraphs 43 and 47

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