

HONG KONG / JUDGMENT

CLARK QUANTUM KENT v. HAI TIN LTD AND OTHERS

[2019] HKCFI 1145

COURT

Court of First Instance

DECIDED

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[2019] HKCFI 1145 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF FIRST INSTANCE ACTION NO 961 OF 2017

BETWEEN CLARK QUANTUM KENT (formerly known as Plaintiff John Mohammad Clark and John Julius Tasca) and HAI TIN LIMITED 1st Defendant (formerly known as Allied Finance Asia Limited) ALLIED FINANCE TRUST AG (Z RICH) 2nd Defendant ALLIED FINANCE TRUST AG (VADUZ) 3rd Defendant IHAG HOLDING AG 4th Defendant PRIVATBANK IHAG Z RICH AG 5th Defendant BERNHARD WILHELM LAMPERT 6th Defendant RODERIC NOEL ANTHONY SAGE 7th Defendant ROLF PETER SCHNELLMANN 8th Defendant EQUIOM PRIVATE LIMITED 9th Defendant (formerly known as A.F. Private Limited) BALTERA LTD. 10th Defendant SWISS INTERNET CAPITAL GROUP LTD. 11th Defendant ALLIED FINANCE SERVICES S.A. 12th Defendant SURYA FUND SERVICES LTD. 13th Defendant

Before: Deputy High Court Judge Dawes SC Dates of Hearing: 22 October 2018 and 26 April 2019
Date of Decision on Costs: 26 April 2019 Date of Reasons for Decision on Costs: 2 May 2019

REASONS FOR DECISION ON COSTS

INTRODUCTION

This is a dispute in respect of a trust (known as the Monfred Trust) (the Trust) under which the 1st defendant is the sole trustee and the plaintiff is the sole beneficiary. The Trust is governed by Hong Kong law. There are two applications (by way of a summons dated 2 August 2018 (the Summons)) before the Court. Paragraphs (1) and (2) of the Summons provide as follows: An order that an injunction be granted against the 1st defendant that the 1st defendant do consent to and support with all means, including but not limited to by itself or by its directors, officers, employees, agents or such persons over which it exercises effective control or influence, an application to be made by the 8th Defendant to the High Court for the Canton of Z rich (Obergericht des Kantons Z rich) (the Obergericht), Switzerland in case number SBI 70180-0:- To permit inspections of the painting, The Entombment of Christ attributed to Titian (the Painting) to be carried out by person or persons; for the proposed sale, if any, of the Painting, such sale to be subject to such conditions as the Obergericht may fix, in particular as to the receipt and retention of the proceeds of any such sale; An order for the sale, if any, of the Painting in such manner and on such terms to be reviewed by the Obergericht upon the completion of the inspection of the Painting as set out in the foregoing paragraphs. The application was heard on 22 October 2018 and my decision was reserved. At the hearing, the Court was already informed that the 8th defendant was appealing against his criminal conviction and the hearing before the Obergericht was scheduled to take place on 13 December 2018. It was however not apparent then that the sale of the Painting was going to be the subject matter of that appeal. On 18 December 2018, the 1st defendant s solicitors informed the Court the appeal was heard and Obergericht s short form decision together with the English translation of the same prepared by the 1st defendant s Swiss lawyers were enclosed (Decision). The Court was informed that the Obergericht s written reasons would be provided within 3 months. Although the written reasons of the Obergericht has not been made available, the parties then wrote to the Court making a number of points on the effect and impact of the Decision. Having considered the English translation of the Decision: It appears to me that the Obergericht has ordered that (i) the Painting be confiscated and realised by the cashier of the Z rich District Court (the Bezirksgericht

- 6) and that (ii) the proceeds from the realisation thereof be awarded to the 1st defendant (13). In these premises, it seems that there is no longer a need for the Court to order relief in terms set out in the Summons. That is because the process of sale of the Painting (and the manner in which it is to be conducted) are now completely in the hands of the Bezirksgericht, over which neither the 1st Defendant nor the 8th defendant has any control. If so, then the following results would seem to follow: the 8th defendant would no longer need to apply for sale of the Painting (since it has already been ordered by the Obergericht); an additional order for said sale would be superfluous; and the 8th Defendant would not be a suitable applicant for inspection of the Painting (since it has already been divested from him by way of the Obergericht s confiscation order). Accordingly, none of the relief sought under paragraphs 1 and 2 of the Summons appears necessary or appropriate. Despite the

aforesaid, the plaintiff's solicitors maintained that an injunction in terms of the Summons was still necessary. As the issue involves the interpretation and effect of the Decision, the Court directed a further hearing for submissions on the necessity of the orders sought. The parties eventually agreed shortly before the resumed hearing that an injunction is no longer necessary and the only remaining issue was costs. At the hearing on 26 April 2019, I ordered that: costs of the Summons (including the hearing on 22 October 2018) be paid by the 1st defendant to the plaintiff to be taxed if not agreed; and there be no order as to costs for the hearing on 26 April 2019. In respect of the hearing on 26 April 2019, I took into account the fact that both parties had insisted that determination of the Summons was necessary until shortly prior to the hearing. Further, although the plaintiff was successful in obtaining costs of the Summons, I declined to give them liberty to apply or to adjourn the Summons sine die as submitted by Mr. Todd. I am therefore of the view that making no order is fair in the circumstances. As to costs of the Summons (including the hearing on 22 October 2018), I am of the view that had it not been the Decision, I would have allowed the plaintiff's application in slightly different terms. There were therefore good justifications in making the application in the first place and there is no reason why costs should not follow the event. To explain my decision, I shall set out the reasons as to why I would have granted the injunction sought.

II. FACTUAL BACKGROUND The salient facts are largely undisputed. The plaintiff is a national of the United States of America and the sole beneficiary of the Trust. The 1st defendant is a company incorporated in Hong Kong, carrying on business as, inter alia, a professional trustee. The Trust was established pursuant to a trust deed dated 3 July 2007 executed between Jura Management Trust of Vaduz, Liechtenstein, as settlor and the 1st defendant as trustee under its former name of Allied Finance Asia Limited (the Trust Deed). The 8th defendant is the registered owner of the Painting, which was stored in an art storage depot near Cologne and is under judicial control of the Obergericht. The dispute between the plaintiff and the defendants arises from some convoluted schemes consisting of a series of complex transactions, with multiple corporate entities involved (the Schemes). The particulars of the Schemes are not germane to the issues with which these applications are concerned. Suffice it for me to say that, in carrying out the Schemes, the 8th Defendant caused the Trust fund not disputed in the present proceedings. The following points in connection with the Swiss proceedings are relevant:- The prosecution against the 8th Defendant was instituted by the 1st Defendant (as trustee of the Trust). In the same instance, the 1st Defendant brought a civil claim against the 8th Defendant in parallel, in a bid to reconstitute the Trust and recover any loss arising from the 8th Defendant's wrongdoing. On 23 March 2017, the Bezirksgericht convicted the 8th Defendant of qualified embezzlement on the basis that the 8th Defendant misappropriated the Sum and used it for his own personal needs and purposes between April 2010 and June 2011. The reasoned judgment (the Urteil) was delivered on 27 April 2017. In the Urteil, the Bezirksgericht ordered, inter alia, (1) that, in respect of the 1st Defendant's civil claim, the 8th Defendant pay the 1st Defendant the Sum as damages; (2) that the seizure of the Painting be lifted (and returned to the 8th Defendant) because a sale thereof (as requested by the Prosecution) would be inadvisable at that stage. On or about 12 April 2017, the 8th Defendant lodged an appeal to

the Obergericht against his conviction. The Prosecution, for its part, appealed against the lifting of the seizure. Pending the appeal, the Painting remained under the control of the Obergericht. In the wake of his conviction (and the compensation orders made by the Bezirksgericht), the 8th Defendant (being the registered owner of the Painting then, as now) wished to exercise his right of ownership of the Painting to sell it and apply the proceeds to restore the Trust. This led the 8th Defendant to file two applications to the Obergericht dated 6 December 2017 (the December 2017 Application) and 12 March 2018 (the March 2018 Application) for approval to have the Painting produced for inspection by a prospective purchaser. The December 2017 Application was refused by the Obergericht. As will be explained below, the reasoning for this decision would prove critical to the determination of the applications. I shall therefore set it out in full as follows:- Grounds of Decision

1. In these criminal proceedings, [the Painting] has been seized by the Cologne Office of the Public Prosecutor by mutual judicial assistance and stored at an art warehousing company in Germany.
2. By Submission dated 6 December 2017, the [8th Defendant] gave notice that he had identified a party interested in purchasing [the Painting]. The [8th Defendant] had also requested a date to visit the painting at the art warehouse for purposes of taking photographs.
3. The ownership title to the painting in question is currently still unclear. In his examination as a Defendant, the [8th Defendant] himself took the position that he had sold [the Painting] and/or that he had transferred the shares to the owner of [the Painting] by way of security, and/or that the [1st Defendant] is the beneficial owner of the Painting. Against this background, there is no legal basis whatsoever for the [8th Defendant] to undertake any action with respect to a sale. For this reason, his application should be dismissed. The March 2018 Application was, likewise, declined, on the ground that the 8th Defendant had failed to resolve the lack of clarity as to ownership of [the Painting] . At this juncture, I note that, from the reasoning of the Obergericht set out above, its primary concern (if not its sole concern) appears to be the potential problems arising from the possibility of the 8th Defendant not having title to the Painting. It follows that, if that could be adequately addressed, the Obergericht should be inclined to allow the 8th Defendant's application for an inspection (and, in all likelihood, sale) of the Painting, given he is the registered owner thereof. After both of his applications were turned down, the 8th Defendant attempted to seek the 1st Defendant's consent to a fresh application to the Obergericht for inspection and sale of the Painting (the Proposed Application). Nevertheless, the 1st Defendant has remained resolute in refusing to consent to any such application; hence the applications by Summons. THE PLAINTIFFS AND THE 1ST DEFENDANT'S RESPECTIVE POSITIONS In support of the applications, the Plaintiff, in gist, submitted the following:- There is a strong prima facie case that the 1st Defendant is in breach of trust on two levels:- First, the 1st Defendant is vicariously liable for the 8th Defendant's misconduct. Secondly, the 1st Defendant, as the primary wrongdoer, is in continuing breach of trust by failing to take all

reasonable steps to ensure restoration of the Trust funds. The balance of convenience tips in favour of the Plaintiff for the following reasons: It is in the best interests of all parties concerned to have the Painting sold at the best available price as soon as is practicable. The Painting has a complicated history regarding its proper attribution and provenance. There is no guarantee that there will always be a willing and ready buyer to pay a price similar to that offered by a Mr. Heck, an intended purchaser interested in the Painting. Given the available avenues of criminal appeals in Switzerland, it might take several years before the Plaintiff could be fully compensated by, inter alia, having the Trust fund reconstituted through the Swiss proceedings. The 1st Defendant would suffer no real potential prejudice arising from the orders sought (or at least it is unable to show any). Against these submissions, the 1st Defendant put forward the following grounds in opposition to the applications: Based on the advice given by the 1st Defendant's Swiss legal team, whether or not the 1st Defendant consents to the Proposed Application would make no difference (the No Difference Ground); The orders sought, if granted, would offend the Obergericht (the Disrespect Ground); The 1st Defendant might be deemed by the Obergericht to be colluding or cooperating with the 8th Defendant pending the latter's appeal, which might lead to repercussions because the 8th Defendant is a criminal (the Collusion Ground); The 8th Defendant may take advantage of the prospect of selling the Painting in his appeal against his conviction and against the quantum of civil damages awarded by the Obergericht. In particular, the 8th Defendant might be able to pay less damages to the 1st Defendant than he otherwise would by reason of the sale (the Reduction of Damages Ground); and Damages are an adequate remedy to compensate the Plaintiff for any loss arising from the Court's refusal to grant interim relief (the Adequacy of Damages Ground).

RELEVANT LEGAL PRINCIPLES

Mandatory interlocutory injunction The injunction sought is in the nature of a mandatory injunction. The following propositions concerning the grant of this species of injunction are well-established (see the summary in Hong Kong Civil Procedure 2019 at 29/1/11, 29):- As with an interim negative injunction, the applicant generally needs to show, at the outset, that damages would not be adequate to compensate them for any loss caused by the refusal to grant a mandatory interlocutory injunction. If they fail to do so, injunctive relief would normally be withheld. If there is doubt as to the adequacy of damages in compensating either the applicant or the respondent, the Court shall proceed to the balance of convenience stage. Through this balancing exercise, the Court would take whichever course appears to carry the lower risk of injustice should it turn out that it is wrong. So far as merits are concerned, the Court would not grant a mandatory injunction unless it feels a high degree of assurance that, at the trial of the action, it would be shown that the injunction is rightly granted. The applicant would therefore need to make out a strong prima facie case on the merits in order to succeed. Since the Court is exercising its equitable jurisdiction whilst granting an interim injunction, the Court should give due weight to general equitable considerations in considering whether to do so in any given case. It is trite that equity does not act in vain, which requires the Court to withhold injunctive relief where to do otherwise would be tantamount to locking the stable door after the horse has bolted: see *Hsin Chong Construction (Asia) Ltd v Henble Ltd* (unrep., HCCT 23/2005, 12 May 2005)

per Reyes J (as he then was) at 29. Application under Order 29, rule 4 Order 29, rule 4 provides as follows: The Court may, on the application of any party to a cause or matter, make an order for the sale by such person, in such manner and on such terms (if any) as may be specified in the order of any property (other than land) which is the subject-matter of the cause or matter or as to which any question arises therein and which is of a perishable nature or likely to deteriorate if kept or which for any other good reason it is desirable to sell forthwith. The purpose of this rule is to avoid any injustice that might result from goods becoming of no value or significantly reduced value over the course of interlocutory proceedings: see Hong Kong Civil Procedure 2019 at 29/8/11; On Demand Information plc v Michael Gerson (Finance) plc [2003] 1 AC 368 per Lord Hobhouse at 7, 33. The law of trusts It is settled law that trustees are subject to the supervisory jurisdiction of the Court and that they are under a duty to safeguard trust assets. They are, additionally, placed under a fiduciary duty to act in the best interests of the beneficiaries: see Libertarian Investments Ltd v Thomas Alexej Hall (2013) 16 HKCFAR 681 per Ribeiro PJ at 72-3.

ANALYSIS

Merits of the Plaintiff's case against the 1st Defendant I agree with the analysis of Mr. Stock SC, Counsel for the Plaintiff, with regard to the merits of the Plaintiff's claim against the 1st Defendant in trust. In particular, I am satisfied that there is a strong prima facie case that the 1st Defendant has acted in breach of trust in the two ways delineated above. In particular, I accept that on the materials before me, it is highly probable that the 1st Defendant would be held to be vicariously liable for the 8th Defendant's wrongful conduct at trial by reason of the close connection between the two. Indeed, contrary to the submissions of Mr. Brown, Counsel for the 1st Defendant, case law suggests that the principal does not need to have knowledge of its agent's wrongdoing for vicarious liability to arise: see Dubai Aluminium Co Ltd v Salaam [2003] 2 AC 366 per Lord Nicholls at 22. Further, I am satisfied that, being the trustee of the Trust, the 1st Defendant is under a continuing fiduciary duty to protect the value of the Trust fund. In this respect, the Plaintiff is, in my view, correct in saying that, under the present circumstances, the 1st Defendant's consent would be conducive to the Proposed Application. I would develop this point in greater detail below when I consider whether equity would act in vain in the present premises. For present purposes, I shall only point out that, once it is accepted that the 1st Defendant's consent does help, it naturally follows that the 1st Defendant is duty-bound to agree to the Proposed Application because doing so is precisely a way to recover the Trust assets. Mr. Brown sought to detract from the Plaintiff's two-level analysis by contending as follows: So far as the first level of breach is concerned, it is irrelevant to the present applications because the applications are not concerned with the culpability of the 1st Defendant, but rather whether there is a strong prima facie case that the Painting should be sold. In relation to the second level of breach, the 1st Defendant, by taking proceedings in Switzerland against the 8th Defendant and successfully obtaining judgment against him, has discharged his duty to take all reasonable care to safeguard the Trust assets. With respect to Mr. Brown, I do not agree with his analysis. When one speaks of merits in the context of an interlocutory injunction application, one is addressing

the merits of the applicant's cause of action. In this case, the Plaintiff's cause of action as against the 1st Defendant is breach of trust. Accordingly, it is the quality of this cause of action that the Court is interested in at this stage of the applications. Mr. Brown's formulation of the issue (i.e. whether the Painting should be sold) takes one nowhere because it is, in effect, another way of asking, should relief be granted as per the Plaintiff's request. As to whether the 1st Defendant has already done enough to discharge its duty, I consider that it has not, for the simple reason that the duty is continuing and cannot be discharged once and for all. That the 1st Defendant previously made an effort (a commendable one at that) to reconstitute the Trust is no answer to the question whether the 1st Defendant has taken all reasonable steps that are open to it at this point in time to do the same. Accordingly, if it is unreasonable for the 1st Defendant to withhold its consent in the present premises (which I believe, for the reasons given below, it is), then its prior diligence is no defence. In connection to this argument, Mr. Brown also questioned whether selling the Painting would, on a closer analysis, indeed allow the Trust to be reconstituted. His reasoning was as follows: since the Painting is currently under the control of Obergericht, selling it would transform the Painting into monetary assets which would, nevertheless, still remain in the possession and control of the Obergericht thereafter. Sale of the Painting would therefore be of no use whatsoever to the restoration of the Trust fund. I do not accept this argument. For one thing, one would recall that the Obergericht rejected the December 2017 and March 2018 Applications on the basis that the true ownership of the Painting remains obscure. On the assumption that the Proposed Application is allowed, it would, ex hypothesi, mean that the Obergericht is no longer bogged down by the issue of ownership. Realistically, therefore, there is no reason to suppose that the Court, despite being satisfied as to who owns the Painting, would forfeit the sale proceeds after the Painting is sold. Further, I am satisfied that the Painting is of such a sort that there is not always a readily available market for it. This means that, by the time the Swiss (or Hong Kong) proceedings are concluded, there might be no willing and ready buyer at all. It is therefore paramount for the 1st Defendant and the Plaintiff to act promptly where there is such a buyer, so that the opportunity to reconstitute the Trust fund would not be lost. In this light, even if the 1st Defendant is correct in suggesting that the sale proceeds would not go to the Trust immediately after the sale, selling the Painting would still be a critical step towards restoring the Trust fund. The No Difference Ground The more controversial issue, in my mind, is whether the 1st Defendant's consent would in any material way assist the 8th Defendant in the Proposed Application. If it would not, it would bear on the analysis of the present case in two fundamental ways: first, as alluded to above, the duty on the 1st Defendant's part to give consent to the Proposed Application would not have arisen in the very first place; and secondly, equitable relief ought to be withheld on the basis that equity does not act in vain. In this regard, Mr. Stock SC furnished an affirmative answer on the footing that the Obergericht would consider any material new facts and reassess its decisions accordingly and, that the 1st Defendant's consent is material because he was identified by the Obergericht as having a possible interest in the Painting. To the contrary, Mr Brown maintained that the 1st Defendant's consent to the Proposed Application would not take the matter any further because its consent (without more) does not dispose of the question of ownership over the Painting the hurdle in the December 2017 and the March 2018 Applications. The 1st defendant could, so the

argument runs, expect exactly the same response from the Obergericht, unless that issue is resolved. I appreciate the force in Mr Brown s argument, but I have come to reject it in the light of the reasoning behind the Obergericht s decisions on the two Applications. The Obergericht appears to have refused the Applications on the basis that some third party might have some interest in the Painting. If the 1st defendant the party expressly identified by the Obergericht as potentially having a competing interest with the 8th Defendant comes forward and signify its agreement to the inspection and sale, it would naturally (to say the least) go some way to addressing the Obergericht s concerns. Granted, the 1st Defendant s consent would not be conclusive or determinative of the title issues relating to the Painting, but it would certainly address a concern which had been bothering the Obergericht and thus lead to a real possibility that the Proposed Application would be allowed the third time around. This would be sufficient for the duty to consent on the part of the 1st Defendant to arise and for equity to intervene in the present premises because its consent does help in a material way. It also follows that, by failing to consent to the Proposed Application, the 1st Defendant has acted in breach of its duty to restore the Trust fund. It is not open to the 1st Defendant to argue (as it did) that, insofar as it does not oppose the Proposed Application, it has discharged the said duty the duty requires it to take positive steps to preserve the value of the Trust. The Disrespect Ground I shall deal with this Ground briefly because, with respect to Mr. Brown, it has little merit. As submitted by Mr. Stock SC, reconsideration of procedural decisions is a normal and accepted part of the Swiss legal process (or, indeed, any developed legal system). It is hard to see why the Swiss Court would feel affronted simply because this Court grants an order which would enable it to make a final determination on the matter. In my view, there is no usurpation of jurisdiction or any other form of disrespect involved. The Collusion Ground Again, with respect, this Ground is devoid of merit. On the face of the evidence, the Proposed Application is understood by all parties involved (including the Obergericht: see, for instance, a letter from the 8th Defendant s Swiss lawyers to the Obergericht dated 12 March 2018, explaining the motives behind the December 2017 Application) to be an attempt by the 8th defendant to atone for its wrongdoing. It is inconceivable that the Obergericht would find the 1st defendant s consent to such an innocuous arrangement inculpatory or otherwise suggestive of illicit activities. The Reduction of Damages Ground This Ground is, yet again, lacking in merit because, as explained by Mr Stock SC, any reduction in the amount payable by the 8th Defendant to the 1st defendant must mirror a co-extensive increase in the Trust fund. In this light, the Trust would in no way be worse off as a result of sale of the Painting. Quite the contrary, an expedient restoration of the Trust funds would be beneficial to the Trust for the self-evident reason that the risks of non-recovery further down the road (by reason of, say, any of the Defendants insolvency) could be avoided altogether. The Adequacy of Damages Ground The thrust of the 1st defendant s logic could be boiled down to this: even if the plaintiff is right in claiming that, should injunctive relief be withheld, the Painting would depreciate in value (or, worse still, might not be sold at all), any damage that it suffers is capable of being quantified (and so adequately compensated for by damages). This line of reasoning is flawed. The Trust in the present premises is an investment trust which is intended to generate returns for the plaintiff: see Clause 3 of the Trust Deed. The sooner the Trust is reconstituted, the sooner the fund could be used to that end. Accordingly, should the Plaintiff be denied the relief

sought in these applications (and the sale not take place as a result), it might suffer some loss of investment returns, which would, by its very nature, be difficult to quantify. Admittedly, there is a chance that the Obergericht might refuse to allow the inspection or sale even with the 1st defendant's consent. This would, however, be something that the trial judge would have to consider when fixing the quantum for this head of damage because, if relief is withheld from the plaintiff, one would never know what would have happened during the interim period before trial had it not been. This just goes on to demonstrate the difficulty in quantifying such losses.

Balance of convenience In the light of the foregoing analysis (in particular given the plaintiff has shown that it has a strong *prima facie* case and that damages would not adequately compensate it for loss occasioned by a denial of interim relief), the balance of convenience tips in favour of the plaintiff. What is more, I consider the burden that the injunction would place on the 1st defendant to be minimal. The positive act that the 1st defendant might be required to perform involves expenditure of little cost or labour (if any). The lack of hardship that might be experienced by the 1st defendant, in my view, reinforces the plaintiff's case.

Conclusion on the interim mandatory injunction application In the circumstances, I have come to the view that the Plaintiff has satisfied the test for an interim injunction to be granted so as to mandate the 1st defendant to agree to any Proposed Application. Notwithstanding that, I am not satisfied with the breadth of the order in terms of paragraph 1 of the Summons. I am particularly troubled by such phrases as support with all means and such persons over which it exercises influence, which are vague and imprecise. As correctly pointed out by Mr. Brown, mandatory injunctive orders, being coercive in nature, must be drafted with sufficient precision, lest the enjoined party be held liable for contempt through no fault of its own: see *The Incorporated Owners of Jade Plaza v Lam Chau Shing & Ors* (unrep., HCA 2331/2004, 28 June 2005) per DHCJ Saunders at 3. At the conclusion of the hearing, I have invited the plaintiff to re-consider the wordings of paragraph (1) of the Summons but the invitation was declined by the plaintiff's solicitors. Whilst I am satisfied that an order along the lines of paragraph (1) ought to be made, I am of the view that the wordings should be revised by adding the words in writing after support and deleting with all means, including but not limited to control or influence.

Order for sale under Order 29, rule 4 On the evidence available, I am satisfied that the Painting (which is clearly the subject-matter of the present action) does not have a readily available market because of the complicated history surrounding its attribution and provenance. This means that, if, for instance, the present prospective buyer runs out of patience and walks away, there is a real risk that the Painting would remain unsold. Accordingly, the requirements under Order 29, rule 4 are, in my view, satisfied, in that there are good reasons for the Plaintiff to sell the Painting forthwith. Mr Brown took two issues with the plaintiff's submissions concerning this order. First, Mr Brown submitted that the Painting was not perishable and that there is no suggestion that it is deteriorating. Whilst this is factually true, the plaintiff in the present case relies on the open-textured part of Order 29, rule 4 (namely, that it is desirable to sell forthwith the Painting for good reasons), rather than that it is perishable or deteriorating. Secondly, Mr. Brown discounted the evidence produced by the Plaintiff by, essentially, pointing out that, at various points in time, there were buyers willing to pay a considerable sum for the Painting (despite the lack of promotion on the market). It appears that he was seeking to draw an inference from this that, contrary to the Plaintiff's allegation, the

Painting has a decent demand on the art collection market. I am not, however, persuaded that any such inference has the effect of removing the probative value of the Plaintiff's evidence. The Bezirksgericht's observation that the Painting might not have any substantial value at all and the persistent rumours as to the authenticity of the Painting on the relevant market, for instance, remain strong evidence in support of the plaintiff's view. In these premises, I would have accepted the plaintiff's submission that any potential buyer of the Painting would have to have a certain appetite for risk and that the Court should not assume that there will always be a coterie of such eager buyers for it. An order for sale under Order 29, rule 4 would accordingly be apposite relief to the plaintiff. Mr Alexander Stock SC, Mr Byron Chiu instructed by Holman Fenwick Willan, for the Plaintiff (on 22 October 2018) and Mr Richard Todd (on 26 April 2019) Mr Toby Brown, instructed by Zhong Lun Law Firm, for the 1st Defendant (Victor Dawes SC) Deputy High Court Judge

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Prepared on 28 October 2026 · Esheria