

Snapshot: implementing Cayman Islands Charging Orders in aid of enforcing foreign arbitral awards

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In the recent decision *Top Jet Enterprises Limited v Sino Jet Holding Limited, Skyblueocean Ltd, and Jet Midwest Group, LLC* (unreported, 3 August 2021), Justice Segal, provided welcome clarification of the grounds on which the Grand Court of the Cayman Islands (**Court**) will grant an order for sale of shares in a Cayman Islands company secured by way of a charging order absolute in support of the enforcement of a foreign arbitral award.

Whilst most practitioners will be aware that it is relatively quick and straightforward to enforce foreign arbitral awards in the Cayman Islands, they may not necessarily be aware of the breadth of options available to judgment creditors. Furthermore, charging orders are sometimes perceived as a less favourable enforcement option, on the basis that it is considered an indirect, and slow, method of enforcement as the charging order does not, of itself, realise funds to satisfy a judgment debt. This decision provides a timely reminder of the willingness of the courts in the Cayman Islands to assist with the recovery of judgment debts and highlights that a charging order can be used as an effective remedy to support the enforcement of arbitral awards within the Cayman Islands.

Background

On 22 June 2020 an arbitral tribunal in Hong Kong made an award in favour of Top Jet Enterprises (**P**) against Sino Jet Holding Limited (**D1**), Skyblueocean Ltd (**D2**), and Jet Midwest Group, LLC (**D3**) for US\$87,231,250 (**the Award**). P sought leave to enforce the Award in the Cayman Islands pursuant to which, on 2 September 2020, the Court entered judgment in terms of the Award (**Judgment Debt**). After the defendants failed to engage with the enforcement process or take any steps to satisfy the Judgment Debt, the Court granted P a charging order absolute on 26 January 2021 over the shares held by D2 in D1 (**Shares**) securing the Judgment Debt, interest and the plaintiff's costs in aid of enforcement.

D2 further failed to respond to or defend the enforcement proceedings or to pay or procure the payment of the Judgment Debt and so, P applied for an order that the Shares be sold and Grant Thornton be appointed to conduct the sale of the Shares. P set out a detailed process to conduct and effect the sale (including advertising, marketing, timetable, due diligence on bidders, deposits for bidders, permission to accept credit bids and to return to Court to approve the sale following the completion of the sales exercise).

Decision

The Court accepted that it was required to conduct a two-stage process:

1. Should the Court grant an order for sale? (**Enquiry 1**); and
2. If so, what, if any, directions should be given regarding the sale (**Enquiry 2**)?

Enquiry 1

In the absence of Cayman authority on the issue, Justice Segal relied upon English authority and guidance (even though there are differences between the Cayman and English procedural rules) that, inter alia (a) a charging order has the like effect and is enforceable as if it were an equitable charge and, as such, the Court has an inherent jurisdiction to grant an order for sale; and (b) even though an order for sale is an extreme sanction, the Court may order a sale if the circumstances of the case justify such an order being made.

Justice Segal took the view that there were sufficiently powerful reasons to justify a sale, notwithstanding its draconian nature, including, but not limited to, D2's complete failure to respond to the enforcement proceedings in the Cayman Islands until late in the process. This failure to genuinely engage in the process until the 11th hour and to put forward any proposals to pay the Judgment Debt demonstrated that without an order for sale, D2 would not do anything to satisfy the Judgment Debt.

Segal also took the view that the Second Defendant's objection that the sale of the Shares would not generate any real value (being one of the considerations in English authority as to why an order for sale may not be appropriate) could be overcome by adopting suitable safeguards in the procedure for conducting the sale.

Enquiry 2

Taking into account the need to ensure the suitable safeguards, Justice Segal was not content with the directions for sale proposed by P and considered it important that there be a proper and genuine sale process, particularly given various additional relationships between the parties. Segal J therefore directed the precise manner in which the Shares should be sold. This included the appointment of Grant Thornton to gather specific information, seek the co-operation and the input of the directors of D1 and related parties, an independent valuation of

the Shares in the event that P sought to credit bid for them, and the gathering and submission of evidence to be presented at a further hearing once a conditional sale agreement had been reached.

Although Segal noted that the steps involved would incur further expense and a good deal of court time, he concluded that the form of order was "necessary to do justice in this case and to ensure that a sale process with suitable safeguards is put in place".

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