IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANIGUILLA CIRCUIT
(CIVIL)
A.D. 2017

CLAIM NO. AXAHCV 2013/0102

In the matter of the Arbitration Act and the Civil Procedure Rules 2000 Part 43

AND

In the matter of an Application for the Enforcement of an Arbitration Award

BETWEEN:

[1] RICHARD VENTO
[2] LANA VENTO
[3] GAIL VENTO
[4] RENEE VENTO
[5] NICOLE MOLLISON
[6] FIRST NEVIS TRUST COMPANY LTD
(as trustee of
MUCH LOVE INTERNATIONAL DYNASTY TRUST
VITA INTERNATIONAL DYNASTY TRUST
LOKI INTERNTIONAL DYNASTY TRUST
FOUNDERS INTERNATIONAL DV DYNASTY TRUST)
Applicants/Judgments Creditors

AND

[1] KEITHLEY LAKE
[2] FIDELITY INSURANCE CO. LTD.
[3] ALLIANCE ROYALTIES, INC.
[4] WESTMINSTER, HOPE & TURNBURY, LTD.
Respondents/Judgment Debtors

Appearances

Mr. Gerhard Wallbank, with him Ms. Rayana Dowden Instructed by WEBSTER for the Applicants/Judgment Creditors
Mr. Brian J. Barnes for the First Respondent/Judgment Debtor
Ms. Dia Forrester for Ms. Marilyn Harewood an Interested Person

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2017: 22, 23 May, 29 September

Practice – Appointment of Receiver - Arbitration award made enforceable - Post judgment relief – Enforcement of Judgment – Application for appointment of Receiver – Whether appointment of Receiver just and convenient - Judgment Debtor failing to make full disclosure of all assets – Judgment Debtor giving contradictory statements of assets and expenses – Explanations to receivables less than satisfactory - Judgment Debtor connected to several corporate entitles both in and out of the jurisdiction – Evidence showing that Judgment Debtor may be a central player in many of those entities – Judgment Debtor making proposal to liquidate debt by transferring funds from funds apparently owned by separate companies set up by Management Company run by the Judgment Debtor – Proposal made to oppose application for sale of certain properties by applicant – No further steps taken by Judgment Debtor to make good on proposal – Real likelihood that assets may exists which is available to Judgment Debtor but which he has failed to disclose – Emphasis on Investigating Role of Receiver - Regard to the costs of appointing Receiver – Regard to the whether the Order proportionate in all circumstances.

DECISION

[1] **RAMDHANI J. (Ag.)** This is an opposed application filed by the applicants/judgment creditors (the applicants) on the 30th December 2016, seeking, together with related orders, the appointment of a receiver of the property and assets of the 1st named respondent/judgment debtor (the respondent). The application was heard on the 22nd and 23rd of May 2017, and upon consideration it was granted on terms set out in this decision. The reasons for making this order is now set out.

THE PARTIES

[2] The applicants, Richard Vento and five others, the last as trustee for various companies are pursuant to a written arbitration agreement, the recipients of an Arbitration Award in the sum of US$7,419,000.00. This award was made jointly and severally against the respondents in this claim. That award has since been made an enforceable judgment in Anguilla.

[3] The first respondent is an attorney at law, who was one of the parties bound by the terms of the arbitration agreement and against whom this application is being made. The other

respondents are companies who are companies incorporated in Anguilla and who are jointly and severally liable for the debt.

THE APPLICATION

[4] The application filed on the 30th December 2016, is filed pursuant to Parts 17 and 51 of the Eastern Caribbean Supreme Court Rules 2000 (CPR 2000) and seeks the following orders:

> *"1. Mr. Andrew Morrison of Messrs FTI Consulting be appointed until further order with immediate effect, without giving security, as receivers of the property and assets of the first named respondent wheresoever situate, with authority to do all things which he in his absolute discretion considers to be reasonably necessary to take possession of, collect, get in and secure the said assets and charge his normal fees against such accounts of the first named respondents as he sees fit;*
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> *2. An injunction, by way of a freezing order in support of the receivership;*
>
> *3. An Order for the filing of Receiver's accounts; and*
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> *4. The first named respondent shall bear the costs of this application.*

[5] In support of this application, the applicants have contended essentially that there is sufficient evidence to believe that the first named respondent who is jointly and severally liable for a judgment debt of US$7,419,000.00 which is now substantially unpaid may have likely been taking steps to actively conceal his properties and assets and has been taking steps to resist any act of enforcement, and that unless a receiver is appointed, the applicants will likely be unable to recover the debt, they say that in all of the circumstances of the case, it is just and convenient that such a receiver be appointed.

[6] The applicants have relied on a number of affidavits in support of the application. These included (1) the second affidavit of Richard Vento dated the 29th December 2016 filed in support of the application; (2) the affidavit of David Griffen filed on the 27th January 2017; (3) the affidavit of Shameica Hodge filed on the 27th January 2017; (4) the fifth affidavit of Alan Feurstein filed on the 7th October 2016; (5) the first affidavit of Arlene Mercurius filed on the 1st December 2016.

[7] The applicants also asked that the court consider the earlier affidavits of the first respondent in relation to earlier proceedings. These are: (1) the first respondent's affidavit filed on the 1st July 2016; and (2) the first respondent's affidavit filed on the 7th July 2016.

[8] The first respondent has filed three affidavits in opposition of this application. These are: (1) the affidavit in opposition sworn to by Mr. Keithley Lake, the first respondent and filed on the 9th January 2017; (2) Affidavit of Felicia Hill filed on the 22nd May 2017; (3) supplemental affidavit of Felicia Hill filed on the 24th May 2017; (4) affidavit of Yvette Wallace filed on the 23rd May 2017.

BACKGROUND TO AND GROUNDS OF THE APPLICATION

[9] By way of context, the applicants and all the respondents were involved in a dispute. On the 23rd August 2013, pursuant to a written arbitration agreement executed in the United States Virgin Islands that dispute was settled by arbitration and the applicants received a final arbitral award jointly and severally against the respondents in the substantive proceedings in the stated amount of US$7,419,000.00.

[10] On receipt of the award the applicants sought to have it registered as a judgment in Anguilla, as they considered that all of the respondents are ordinarily resident and/or are companies incorporated under the Companies Act of Anguilla. The parties agreed to be bound by the decision of the Arbitrator and agreed to enforcement to the award without any procedural or substantive objections being made to enforcement. It was also agreed between the parties that the award could be enforced in any location where the losing party assets could be located.

[11] The attempt to seek to register the award in Anguilla was met with opposition by the respondents, and registration was in fact refused by the High Court, but allowed by the Court of Appeal by an order made on the 25th November 2015; it was stipulated that the award could be enforced as a judgment of the court in Anguilla.

[12] The applicants located and identified four properties which they asserted belonged to the first respondent. An application was made to the High Court for an order for sale of these properties. The order was granted but has since been appealed. On appeal a stay was granted in relation to three of the properties, the Court of Appeal refusing to stay the sale of the fourth. That appeal is to be heard by the Court of Appeal.

[13] The applicants say that it is clear from the valuations received for the four real estate properties owned by the first respondent that the value of his beneficial interests therein, being estimated at approximately one million dollars United States currency, will not be sufficient to meet the liability. The real estate properties are also subject to substantial outstanding mortgages such that the lending bank will take in priority to the applicants upon any forced sale. In addition, the first respondent has filed a Record of Examination which indirectly discloses that there are several sources of revenue which the first respondent is entitled to, including proceeds from the dissolution of the Partnership of Keithley Lake & Associates.

[14] On the application the applicants say that 'despite repeated questioning both in correspondence and ordered by the Court, the first respondent has been far from candid about the identity, location and value of his assets.'

[15] They say that the first respondent has repeatedly objected to allowing the applicants to contact his bookkeeper and accounts (sic).

[16] On the application, the applicants contend that the first respondent has refused to provide information from which a valuation for his shareholding interest in his corporate service provider company, AXA Offshore Management Limited, and the valuation of his partnership interests in Messrs Keithley Lake & Associates can be ascertained.'

[17] They say that 'even his legal representatives have also refused to undertake that his assets will not be dissipated. They have also objected, without more, to the appointment of any receiver or any impartial professional who could identify and ascertain the value of the first respondent's assets.' (When the matter came on for hearing the first respondent filed during the course of the hearing, affidavits which showed that one Mrs. Felicia Hill has been appointed by Keithley Lake & Associates to ascertain the value of his share in the partnership. Mrs. Hill also offered an opinion as to the value of AXA Offshore Management Limited.)

[18] The Applicants stated in the application that it is just and convenient to appoint a receiver, and that there are very good grounds to fear that unless a receiver is appointed the judgment will be rendered nugatory, and that damages will not be an adequate remedy. They cite the following reasons:

(a) Unless a receiver is appointed it is unlikely that the true extent of the first named respondent's assets will be known. In this regard, it is important to note that during the oral examinations on the 5th December 2016 the first named respondent disclosed that he does not own a bank account but utilizes a Special Purposes Vehicle (SPV) to conduct his financial affairs, including payment of mortgage obligations. He did not disclose the ownership, shareholders and directors of this entity, nor where it holds bank accounts, the sources of its income, its value or any other material information. He did not disclose the existence of this SPV in the form he was required to complete, truthfully, completely and accurately, prior to the oral examination as to his means. In that form he also omitted to mention his shareholding interests in AXA Offshore Management Limited and his partnership interests in Messrs Keithley Lake & Associates.

(b) The first named respondent was, to all appearances, the attorney who structured the complex network and layers of Anguilla, Nevis and other offshore entities which was used to perpetuate the scheme which led to the applicants' losses. He is thus adept at using such entities and is very familiar with how they can be used to hold and move assets. One example appears to be that a Cayman entity, WHT CDO LLC has been alleged by the first named respondent to hold some US$9million worth of shares and US$2million in cash. The first named respondent has proffered those assets to the applicants in purported satisfaction of the debt. The first named Respondent has not disclosed – despite these assets being put clearly in issue – what his controlling interest in these assets is. Nor has he answered the question which has greatly begged itself, why does he not pay that US$2million over to the Applicants and realize the cash value of the alleged US$9million worth of

shares, if they are indeed what he has represented them to be. Another example appears to be that of another asset holding company, Coral Way LLC, has been transferred to the control of the first named respondent's first cousin… . The first named Respondent now claims (at his oral examination) to be retired. It remains entirely unclear from his examination how he intends to continue funding his mortgage payments or otherwise fund his retirement.

(c) The first named respondent's complete lack of candour and his manifest strategy of blocking enforcement of this debt, in flagrant breach of his own contractual obligations, and his abject refusal to acknowledge his responsibility for this debt, entail that the first named respondent is clearly not an individual who can be trusted to cooperate willingly and transparently with the applicants' efforts to obtain enforcement.

(d) It is also clear that no impartial, independent, professional valuation for his other assets, in particular his shareholding interests and partnership interests will be forthcoming from the first named respondent without compulsion. Even then there can be no certainty that he has stipulated full and complete information.

(e) There is a real risk that unless a receiver is appointed by the court over the first named respondent's assets that enforcement of the judgment debt will go unsatisfied.

(f) There is also a real risk that his assets will be removed beyond the reach of the applicants.

(g) A further reason for fearing this is the fact that the first named respondent refused to provide information during his examination about who he is selling his partnership share in Messr Keithley Lake & Associates to. He claimed that information is confidential and that it involved other persons. However, it must be clear to him that no liability for breach of confidentiality could attach to him if he provides information pursuant to a court order. In practice, the effect of his refusal to provide this information is to frustrate the applicants' ability to garnish payments to be made to him by the purchaser of his share. The Applicants' are in no doubt that the first named Respondent is fully aware of this.

[19] The applicants have put forward one Mr. Morrison as a suitable person to be appointed as Receiver. They have set out his experience and his firms track record for the court and have stated that in regard to costs that 'the fact the first named respondent proffered what he claimed to be US$11million of assets, including US$2million in cash to the applicants indicates that on his own case there are sufficient assets available to meet Mr. Morrison's costs. This is even without including the value of the first named respondent's interests in companies including AXA Offshore Management Limited and his partnership share.

[20] In relation to the late evidence filed, the applicants have argued that this demonstrates very clearly that the first respondent is intent on delaying enforcement and would take very steps to ensure that control of his assets is not taken out of his hands. This is all his design they argue to ensure that the applicants be unable to discover such assets against which enforcement would lie.

[21] It appears that the sum of USD$500,000.00 was allocated to this judgment and was as a result of related proceedings in Texas.

THE FIRST RESPONDENT'S OPPOSITION

[22] The first respondent is opposed to the application. The affidavits together with documents filed on his behalf seek to affirmatively demonstrate that the application is without merit and in any event it would not be just and convenient to appoint a receiver.

[23] The first affidavit in answer was filed on the 9th January 2017. By this affidavit the first respondent has pointed out that the applicants have been unable to show what assets are identified or available for any receiver to administrate over or to manage, and that further it would appear that the applicants are seeking to 'engage an investigator to engage into a search and location of assets purportedly belonging' to the first respondent. The first respondent further states that having regard to the fact that the applicants have already investigated and examined him, and not having identified any other assets than those disclosed the application is premature and ought to be dismissed.

[24] He outlined the background to the matter and he pointed out that after the applicants had sought for and obtained an Order for Oral Examination from the Master, and having served a Financial Position Notice on him, he has provided information regarding his assets. He states: "To date I have complied will all the requests for completion of questionnaires and the disclosure of personal information as demanded of me. In compliance with the Rules of Court I have completed and submitted the Record of Oral Examination disclosing all my financial records and the properties owned by me as I knew to be true and correct.

[25] He stated: "During the oral examination I was thoroughly examined by the Master and aggressively cross examined by the applicants' lawyers. During the process I gave full and frank disclosure to all questions asked of me. Upon the court conducting the oral examination of me, I disclosed that I am now retired from Keithley Lake & Associates and that I am also a shareholder of AXA Offshore Management Ltd., and Fidelity Insurance Co. Ltd. (now defunct), the Court was accordingly of the view that the Record of Examination should be updated with that information. The Court therefore ordered that the Amended Record of Examination be filed and served by the 13th January 2017, a date not yet reached.' He pointed out that he had sent other documents to the applicants and undertook to provide transaction reports from the National Commercial Bank of Anguilla.

[26] He states that it is not true that at the oral examination the Master found that 'there were several sources of revenue which the applicants are entitled to'. He went on to say that his 40% share in the partnership is to be assessed and a reckoning done; he is prepared to disclose this information when it is done.

[27] In this first affidavit he stated that he did disclose the name and address of the bookkeeper but that person's is the firm's bookkeeper and cannot disclose financial information about the firm without the expressed consent of the other partners. Further, the information held by the bookkeeper is confidential and the applicants being represented by a rival law firm ought not to be allowed to access this information as this 'could raise serious confidential issues'. In any event he has presented all relevant information.

[28] In the affidavits filed by Mrs. Hill and Mrs. Wallace, he presented evidence that steps had been taken since January 2017 to have his share in the firm valued and that that process was ongoing and would take a further two to three months to complete. Mrs. Hill deposed that she was in the process of providing a valuation for AXA Offshore Management Ltd. and she would need another month to provide her report. She offered a preliminary view that after all adjustments, the net worth of the company as US$9,000.00 with net cash position being approximately US$2,500.00 at the 30th June 2016.

[29] The first respondent also drew attention to the Order of Sale which had been granted by the Master in relation to four pieces of real estate, which order had been appealed as most of these properties were jointly owned with innocent third parties and further that the interest of the mortgage exceeded the forced sale value of these properties. He noted that the Court of Appeal had granted a stay. He states that the Court has taken jurisdiction over all his assets and has placed his assets under the control of an auctioneer who acts under the direction of the court. He says that he has no assets in hiding and that the applicants has failed to show that he has any other assets. He states: "As far as I know I have no other assets to disclose'. He contends that the applicant is asking this Court to interfere with the Master's order for sale.

[30] As regards litigation in the Cayman Islands and monies which may be applied to the debt, the first respondent states: "I am prepared to say that the Applicants are engaged in litigation in the Cayman Islands with certain entities over money that may be credited to the judgment debt. All the assets touching and concerning the litigation in the Cayman Islands are under restriction as a result of a Freezing Order put in place upon the application of the present Applications. The applicants have failed to disclose this fact; similar to how they failed to disclose the receiving of any monies towards the judgment debt from proceedings in the Texas County Court…" He goes on to say: "For the Applicants to be making statements and giving the impression that the assets in the Cayman Islands could easily be converted and paid over is disingenuous. They are aware they have an injunction in place and the matters were adjourned at their behest to a date in April [2017]."

[31] He contends that the 'applicants have failed to provide any credible basis for the appointment of a receiver. He states that 'All known assets identified and disclosed have already been taken under the jurisdiction and control of the court and by order of the court have been placed under the control of an auctioneer."

[32] He contend that this application is to ask one court to overrule a court of concurrent jurisdiction and in any event to 'defeat the working of the Court of Appeal using a lower court'.

[33] He contends that where there is an alternative remedy no receiver should be appointed and in any event he says that the conditions for the appointment of a receiver have not been satisfied.

THE ISSUE

[34] The issue for the court is whether the applicants have satisfied the conditions for the grant of a receiver in the circumstances of this matter, and whether such appointment is just and convenient.

THE LAW, ANALYSIS AND FINDINGS

[35] The court's power to appoint a receiver to recover a judgment debt from the income or capital assets of a judgment debtor in Anguilla is derived from section 23(1) of the Eastern Caribbean Supreme Court Act Revised Statutes of Anguilla, Chapter E15 which provides for this interlocutory procedure[1] as follows:

> *"23(1) A mandamus or an injunction may be granted or a receiver appointed by an interlocutory order of the High Court of a judge thereof in all cases in which it appears to the court to be just or convenient that the order should be made and any such order may be made either unconditionally or upon such terms and conditions as the Court or judge thinks just."*[2]

[36] Such a receiver is appointed 'by way of equitable execution to receive not only payments due at the time of the order but also payments which might in future become due.'[3]

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[1] Stated to be the means to an end and not an end in itself: Re Newdigate Collery Ltd. [1912] 1 Ch. 468 of 472

[2] See Thompson and another v Gill [1903] 1 K.B. 760

[3] Per Colman J in Soinco S.A.C.I. v Novokuznetst Aluminum Plant [1998] QB 406 approval in Masri v Consolidated Contractors International Company Sal & Anor [2008] EWHC 2492 (Comm) 21 October; by way of commentary on this case, it was opined that "The rulings show that the English court is willing to make strong orders to ensure that

Receivership by way of equitable execution is summarized by Snell *Equity* , 31st ed (2005), para 17-25:

> "*A judgment creditor normally obtains satisfaction of his judgment by execution at common law, using the writ of fieri facias, attachment of debts and, formerly, in the case of land, the writ of elegit. There were cases, however, where the creditor could not levy execution at law owing to the nature of the property, the principal case being where the property was merely equitable, such as an interest under a trust or an equity of redemption. Another example was a covenant of indemnity or other chose in action of which the debtor has the benefit, but which could not be reached by attachment. In order to meet this difficulty, the Court of Chancery evolved a process of execution by way of appointing a receiver of the equitable interest, and if necessary supplemented this by an injunction restraining the judgment debtor from disposing of his interest in the property. This process was not 'execution' in the ordinary sense of the word, but a form of equitable relief for cases where execution was not possible. The effect of such an appointment 'is that it does not create a charge on the property, but that it operates as an injunction against the judgment debtor receiving the income' or dealing with the property to the prejudice of the judgment creditor."*[4]

[37] In **Masri v Consolidated Contractors International Company Sal & Anor [2008] EWHC 2492 (Comm) 21 October** it was held that '[t]]he order had no proprietary effect, and acted in personam against the judgment debtor. Any adverse effects which the order might have on foreign parties with knowledge of the order were removed by the *Babanaft* provisos in the order.' This is a reference to **Babanaft International Co SA v Bassatne** [1989] 1 All ER 433 that the order was only enforceable against third parties in respect of overseas assets if declared enforceable in the country concerned.

[38] A court must be concerned what steps would have been taken by the judgment creditor to enforce the judgment debt by other means but such an order may still be made 'at the instance of a judgment creditor notwithstanding that he has not taken advantage of the legal remedies open to him, provided the circumstances render it just and convenient.[5]

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judgments of the English court can be enforced in support of judgment creditors." Kit Jarvis and James Lewis "**Avoiding a pyrrhic victory"** New Law Journal 159 NLJ 25

[4] Cited with approval in Masri v Consolidated Contractors International Company at para. 52

[5] Halsbury's Laws of England Vol. 88.

Halsbury's Laws of England, Receivers (Volume 88 (2012)) 1. The Office, Functions and Liabilities of a Receiver (2) Appointment by the Court (i) Jurisdiction 13. General equitable jurisdiction.

[39] It is accepted that '[t]he appointment of the receiver in aid of enforcement is an interim order, and is inherently temporary, pending payment of the judgment. As soon as the judgment is paid, the receivership will be discharged, whether or not the receivership plays any eventual role in the recovery of payment'[6].

[40] In considering whether it is just and convenient to appoint a receiver, the Civil Practice Rules and Procedure (CPR 2000). CPR 51.3 sets out the matters which the court must have regard to. The court must have regard to the:

(a) amount likely to be obtained by the receiver;
(b) amount of the judgment debt; and
(c) probable costs of appointing and remunerating the receiver.

[41] A receiver appointed is, and remains an officer of the court and is primarily concerned in recovering the judgment debt from any income or capital assets of the judgment debtor in keeping with the terms and conditions of his appointment and in accordance with the general guidance of the court and if necessary those special directions which may be given from time to time see **Gardner v London Chatham and Dover Railway Co**. (1867) LR 2 Ch. App. 201 at 211.

[42] Other procedural matters are dealt by CPR Part 51 including the manner of the application and a general rule of requiring security from the person to be appointed receiver, which may be dispensed with by the court. Part 51 also gives the court a power to fixing the receiver's remuneration. It is accepted that the costs of the receivership and the associated costs are to be ordinarily met from the assets of the defendant in question which are the subject of the receivership. (Hughes v Customs and Excise Commissioners [2003] 1 WLR 177

THE MATTERS FOR THE COURT'S CONSIDERATION

[6] Per Lord Justice Collins in Masri v Consolidated Contractors International Company Sal & Anor [2008] EWHC 303 at paragraph 68.

(a) AMOUNT LIKELY TO BE RECOVERED

[43] A court must have regard to three considerations set out in CPR 51.3 in the context of the circumstances of the case. The first matter therefore that the court must have regard to is the amount likely to be recovered by the receiver. As noted earlier, it is the applicants' contention that a receiver may likely recover the full outstanding amount of the judgment debt. They point to certain bits of evidence before this court and in any event urge the court to find that there is a real likelihood has sufficient assets at his disposal and he has been taking steps to avoid detection and enforcement. The first respondent has asked the court to dismiss these contentions as he has disclosed all of his assets most of which are already under the court's jurisdiction.

[44] There is no doubt that the first respondent owns four pieces of real estate. Two of these are owned solely by him and two others are jointly owned with persons not connected to these proceedings. An order of sale in relation to all of these properties was granted by the court, but a stay is now in effect in relation to the two jointly owned.

[45] He has also given evidence that he is entitled to a 40% share in the Law Firm of which he was a partner. Since his retirement he has been receiving as towards his interest in the partnership the sum of EC$13,000.00 per month. He states that this goes to pay his mortgage. He has set out his monthly expenses in the record of examination.

[46] Had this court been satisfied that the assets which have been set out above are all the assets of the first respondent, this would have been the end of this application. This court however, has considered that there is a real likelihood that he has sufficient capital assets or is entitled to sufficient income whether presently due or will become due, which may satisfy or substantially satisfy this debt.

[47] I arrive at this conclusion for a number of reasons. I will treat with these under a number of headings: (i) Funds and Assets in the Cayman Islands connected to the first respondent;

(ii) The first respondent's use of various entities for Financial Transactions; and (iii) His non-disclosures and manner of disclosure of material.

Funds and Assets in the Cayman Islands connected to the First Respondent

[48] After these proceedings had been going on in Anguilla against all four respondents for nearly two years without any success on the recovery of the award/judgment debt, the applicants filed separate proceedings in the Cayman Islands against the fourth respondent, Westminster, Hope & Turnberry Ltd. ("Westminster"). It appeared that they believed that they had sourced a considerable amount of cash and assets which belonged to that respondent.

[49] Those proceedings began in March 2015, and it was commenced solely against the fourth respondent.[7] Following that order for enforcement against the fourth respondent, the applicants sought and obtained on the 1st May 2015 a freezing order against assets of the fourth respondent in the Cayman Islands, whether solely or jointly owned up to a value of US$9,732,201.01. In particular, the prohibition included all shares or other assets held in one Concord Capital SPC Fund, including but not limited to (a) Hewett Island Class A shares, and (b) Rosemund Class shares This order, though made in proceedings which was also against the fourth defendant was expressly made to cover Concord from itself taking any action to remove from the jurisdiction assets which it held for the fourth defendant up the value of the said US$7,732.201.01.

[50] The Order of the 1st May 2015, also required that Concord provide disclosure of all assets which it held for the fourth respondent. Pursuant to a disclosure order, the sole director of Concord, one Charles D'Angelo swore to an affidavit on the 24th June 2015 in which he stated:

[7] The first respondent's statement in his affidavit dated the 1st July 2016 are to be read carefully and together with the exhibits as by his paragraphs 29 and 30 the impression is given that when the applicants sought to enforce the award in the Cayman islands, they had moved against not only the fourth respondent, but also WHT CDO LLC and DMM LLC, when in fact those last two companies joined the proceedings subsequently, and from their own contentions have nothing to do with the liability related to the judgment debt or any of the related awards.

"10. In compliance with paragraph 6 of the Disclosure Order, I hereby confirm that to the best of my knowledge, information and belief, the following is a complete list of all assets within Concord's custody, power, or control, including assets which it has the power directly or indirectly to dispose of or deal with as if they were its own, which are in the Cayman Islands in which Westminster Hope & Turnberry, Ltd (Westminster) is interested in legally, beneficially or otherwise, up to the value of US$9,732,201.02:

(i) 7,213,5376 issued Class A shares of Concord's Hewett's Island Segregated Portfolio (The shares); and

(ii) Subject to paragraph 11 below, a sum of US$821,705.51 which is held by concord in a Bank account with the Royal Bank of Canada, Grand Cayman held in Concord name (the Cash sum").

11. The Cash Sum represents cash held by Concord in the Hewett's Island Segregated Portfolio which Concord has attributed to Westminster for internal accounting purposes only but for which no distribution has been made as at the date of this affidavit. Any distribution to shareholders, including Westminster, will be made by Concord in accordance with the terms of its Articles of Association and offering memoranda.

12. Westminster holds its interest in the Shares as a registered shareholder of Concord.

[51] It would appear that following the Order of the 1st May 2015, two other companies WH & T CDO LLC and DMM LLC joined the proceedings in the Cayman and provided evidence which indicated that they were in fact the owners of all the assets which were held by the fourth respondent. They then agreed that the injunction should continue.

[52] In the meantime, in Anguilla proceedings were moving ahead, albeit not in the way that the applicants would have liked. By November 2015 they filed an application for an order of sale of the four pieces of property in which the first respondent had an interest.

[53] On the 1st June 2016, the first respondent in Anguilla, filed an affidavit to oppose any order of sale. In addition to asserting that even though he was bound by the judgment he was not responsible for the losses. He then identified the four properties and provided evidence that some were part owned by other innocent third parties and that it would be inequitable to order sale. Significantly for this discussion, he pointed to the proceedings in the Cayman Islands and narrated some of the history and stated that there were assets there in excess of US$9 million which were frozen. He provided evidence of a Charging Order Nisi which had been made in the Cayman Islands on the 13th October 2015. He then states:

"All these Order [in the Cayman Islands] remain in force and the Defendants, specifically WHT CDO LLC and DMM LLC being the beneficial owners of the restrained assets, have voluntarily acquiesced to the Applicants' motion for them

to be joined in the proceedings and accordingly be themselves restrained from dealing with the assets."

[54] The first respondent contended that the fourth defendant is the same defendant listed in the Cayman Islands proceedings and that it was clearly a material omission for the applicants to contend that they did not identify any assets capable of satisfying the debt when in the Cayman proceedings they themselves expected to realize assets in excess of US$9 million. He stated:

> *"31. It is now factually incorrect that the Respondents have made no arrangements or attempts to settle the judgment. I am aware that over the last few weeks, WHT CDO LLC has instructed its local counsel to reach out to the Applicants' local counsel, WEBSTER with a view to engaging in discussions for the global settlement of all awards. Specifically WHT CDO LLC has offered to provide to the Applicants the Concord Capital Assets. Those discussions are nascent and ongoing."*
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> *32. WHT CDO LLC is not a party to the Award and has no liability thereunder. It is however as intimated hereinbefore, one of the beneficial owners of the Concord Capital assets against which the Applicants commenced litigation in the Cayman to satisfy the judgment debts.*

[55] In his supplemental affidavit dated the 6th July 2016, the first respondent speaks more to this offer. He states:

> *"11. By way of a letter dated the 5th July 2016, the Respondents, through our Solicitors, Keithley Lake & Associates made an offer to settle ('The Offer') to the Respondents. The said correspondence was issued 'without prejudice save as to costs'. Therein we reserve our right to bring same to the attention of the Court should the Applicants insist on the unnecessary prosecutions of the applications presently before the court.*
>
> *12. The offer would effectuate a full and final settlement of all claims and issues between the applicants and the respondents (collectively 'the parties') arising in these proceedings and all others pertaining to enforcement of the 25th November 2013 Amended Final Award; the 1st May 2014 Final Award on breach of settlement /agreement; and the 29th May 2014 Final Award on Breach of Settlement Agreement (collectively 'the Awards'). This offer followed a series of exchanges between Counsel for the parties over the last few weeks regarding the potential settlement of the dispute.*
>
> *13. The offer was that the Respondents would transfer their rights and interests, to the value of the Awards and reasonable litigation expenses, in the assets of the Fund, in particular the Class A shares in Hewett's Island CDO and Rosemund CDO, to the Applicants. The Respondents to do this either by a withdrawal of their*

opposition to the Charging Order Absolute in the Cayman Proceedings or through the voluntary execution of all required documents and/or consents to vest legal title of the said assets up to and including the value of the Awards and reasonable litigation expenses to the Applicant.

14. The Respondents have explained to the Applicants that the value of the Fund is estimated to exceed US$11 million and comprises of US$2 million in cash and marketable Class A securities in Hewett's Island CDO and/or Rosemund CDO. These assets are more realizable than my persona assets in Anguilla which are subject to third party interests. Indeed the ready cash is a sum equal to the higher valuation estimates for Parcel 127 before deductions for loan obligations. The remainder is realizable securities with a market less impacted by outside economic forces than Anguilla's real estate market currently.

15. It is clear from the foregoing that the Offer, if accepted, would result in the Applicants receiving US$2 million in cash and sufficient realizable assets to satisfy the entire debt owed to them. This would all be done without having to adversely affecting the interests of third parties who have no dealings with the Applicants and/or these proceedings.

[56] I have noted the applicants' reasons for rejecting this offer. There were real concerns about the valuation of the securities and to me it is a reasonable inference at this stage that the respondents were not prepared to release the cash without an acceptance of the whole offer. But to carry on unravelling. What is significant was that the first respondent was now speaking about a transfer from the 'Respondents" of "their rights and interests, to the value of the Awards and reasonable litigation expenses, in the assets of the Funds, in particular the Class A shares in Hewett's Island CDO, to the Applicant." In my view this was clear language that the first respondent was also asserting that **he** owned some rights and interests in the Fund and these shares.

[57] At the hearing, this interpretation of the affidavit to include the first respondent in the term 'Respondents' was vigorously challenged. Try as I might, however, I could not bring myself to find that the first respondent was excluded from this 'collective respondents'. One of the things which grounded my finding was the language used. Another matter was the letter which was written by Keithley Lake & Associates to Webster. It stated on its face that it was a settlement offer related to this claim in Anguilla.[8] It stated that the firm was acting for

[8] There was an error in the claim number but both sides agreed that there were only one proceedings in Anguilla.

the 'Respondents' in this matter but that the proposed settlement was of all matters wherever. To my mind this would have been sufficient to find that the first respondent indeed has some control over those assets in the Cayman Islands. There are also others matters which supported such a finding.

(ii) The first respondent's use of various entities for Financial Transactions; and (iii) His non-disclosures and manner of disclosure of material.

[58] These two matters will be dealt with together for practical reasons.

[59] It was significant for the court to note that there is a complete absence of any or any real explanation as to why this company WHT CDO LLC who was not liable in any way in relation to the judgment debt was prepared to hand over all of US$9 million in cash and assets. It was not lost on this court that the first respondent's management company AXA is or was the managing member of WHT CDO LLC. This is revealed by the affidavit evidence which was filed in those earlier proceedings to resist the Master making orders for sale of the real estate in which the first respondent had interest.

[60] In those proceedings Alan Feuerstein swore his fifth affidavit dated the 7th October 2016. An important piece of the puzzle was pointed out. He stated beginning paragraph 36:

> *"Mr. Lake is undoubtedly the principal of AXA Offshore Management Limited. He executes documents on behalf of AXA Offshore Management Limited. AXA Offshore Management Limited is (or was) the Managing Member of a company called WH & T CDO LLC. WH & T CDO LLC purports to be an Anguilla based company in the business of acquiring Collateralized Debts Obligations ("CDOs") and Collateralized Loan Obligations ("CLOs"). On the 27 July 2005, Mr. Lake executed an agreement on behalf of WH & T CDO LLC appointing Westminster Hope and Turnberry Ltd. as 'Administrator' to administer payments and collections of dividends and interest in respect of CDOs and CLOs held by WH & T CDO LLC. Mr. Duane Crithfield signed that document as President of Westminster Hope and Turnberry Ltd. … In Sales brochure of Westminster Hope and Turnberry Ltd. provided to the Judgment Creditor investment advisor Mr. Hatch (who was also paid as the promotors of the scheme) to convince the Judgment Creditors that there was enough liquidity in CDOs to meet their cash needs as investors. Westminster Hope and Turnberry Ltd. represented:*

> *"WH & T CDO LLC is a securitized pool of loans or debt instruments that are backed by collateral including commercial and residential real estate and other assets.*

It stated in its concluding paragraph:

> *"Account Administration*
> *WH&T CDO LLC has retained the services of Westminster Hope & Turnberry Ltd. to administer and invest portfolio that secures this account. The investor understands and agrees that Westminster administers other investment accounts and may effect transactions with respect to securities in which it, its officers, directors, employees and affiliates may have a direct or indirect financial interest."*

[61] I am satisfied that WH & T CDO LLC was managed by AXA Offshore Management Limited which was in turn managed by Mr. Lake. That being so, it is clear to me that this evidence shows that there was a 'possibility that WH & T CDO LLC or its personnel or affiliates might have a direct or indirect financial interest in the securities.

[62] It has not been lost on this court that while proceedings are moving along in the Cayman Islands and here a 'Record of Examination' dated the 10th October 2016 was filed in these proceedings on behalf of Westminster Hope & Turnberry. The status of the company was stated as having 'ceased trading' as at 31st December 2015, and that its 'current operation status' was listed as 'pending strike off'. The 'Record' showed that the company has no assets. Signing for and on behalf of this judgment debtor is this first respondent Mr. Lake.

[63] The dexterity of the first respondent in managing offshore companies and other entitles to hold and move funds, is also seen in the way he, by his own admission manages his own personal financial matters. When he was orally examined last year, it was only then revealed that he did not personally own any bank accounts and his own mortgage was being serviced by a 'Special Purposes Vehicle" (SPV) AXA Services Corporation. He was ordered to provide details of this SPV. There was some delay in providing this information. He was written to on the 20th December 2016 and reminded to provide this information. By a letter dated the 6th January 2017, his attorneys responded[9] and stated that the SPV,

[9] They explained the delay as being due to the holidays and the fact that counsel was from another jurisdiction.

AXA Services Corporation was incorporated and managed by his management company AXA Offshore Management Limited. It was disclosed that the 'directors/shareholders' is AXA Offshore Management Limited. The letter stated: "There are no books and records for the SPV except for a bank account the details of which a request has been made to the bank to provide. As soon as this information is available it will be turned over to you.'

[64] The bank statements were attached to an affidavit sworn to by the first respondent and filed on the 22nd May 2017. The court saw the credits and the debits for the period January 2014 to present. The accounts showed that most of the debits related to a 'loan'. It did not say what loan, and the amounts though in the vicinity of the stated loan payments, did not match the amount of the loan payments. On one occasion there was a debit of $100,000.00. There are several credits which come from a 'Gerald R Tuskey' and several from one "W.L. Macdonald Law C".

[65] It was brought to this court's attention that under the Companies Laws of Anguilla a company is required to keep accounting records which are sufficient to record and explain its business.[10] This obligation is regarded as being so serious that a failure to comply will amount to an offence.[11] There are no such records. Looking at what was provided by way of the bank statement, one may surmise that this company services a loan but will be unable to say where the monies come from. The explanation given in this court by the first respondent does not fulfil the statutory obligation.

41. The court fully appreciates that there is nothing at all wrong with someone using a special purpose vehicle to service their debts and their business. In the context of this case, however, in light of the lack of records, the fact that the company was set up by the first respondent and the manner in which this information trickled into the proceedings leaves the court with great disquiet about the first respondent's willingness to be forthcoming and forthright. It has supported this court's findings against the first respondent.

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[10] Section 127 of the Companies Act R.S.A. c. C65 states *inter alia*: "127(1) A company must keep account records that – (a) are sufficient to record and explain the transactions of the company; and (b) will, at any time, enable the financial position of the company to be determined with reasonable accuracy."

[11] Section 127(4) of the Act

[66] In the context of all this, the first respondent has not been as forthcoming as he should have been in a timely manner. He has to be pressed to give disclosure. He filed his first Record of Examination on the 7th October 2016. In that Record he omitted to mention that apart from his salary he also received income from other sources. After he was cross examined at an oral hearing he was ordered to file a second 'Record of Examination'. In this new Record he gave details of his additional income. He stated he received US$4,250.00 from rental of the offices for the Law Firm, Keithley Lake & Associates.[12]

[67] In the first Record of Examination to a question as to whether he owned any 'shares, investment insurance policies or stocks/bonds' he answered 'no'. In the court ordered second Record, he changed this answer to 'yes'. He now stated that he had the following interest:

(a) Jointly held shares in AXA Offshore Management Ltd with Spouse;
(b) 50% Interest in Citadel Insurance Company which is being wound up.

[68] The first respondent has contended that he has given all the disclosure he can and that he has been forthright. He states in his last affidavit filed on the 22nd May 2017 when this matter was being heard and stated:

> *"15. On the 6th June 2016, a Financial Position Notice was filed by the Applicants and served on me. To date I have complied with all the requests for completion of the questionnaires and the disclosure of personal information as demanded of me. In compliance with the Rules of Court I have completed and submitted the Record of Oral Examination disclosing all my financial records and all the properties owned by me as I know to be true and correct."*

[69] This statement in paragraph 15 is a simplistic narration and omits to record that he had to be orally examined before a number of matters came to the fore. He gives no explanation why he omitted to mention in his first Record of Examination his interest in AXA Offshore Management Limited, and the rental he collected as well as his interest in Citadel.

[12] By the time this second record was filed he was retired and so received US$293.88 from Social Security – this was recorded.

[70] During this hearing he also caused to be filed on his behalf a number of other affidavits. Two of these were sworn to by one Mrs. Felicia Hill who professes to be a Forensic Accountant and Accounting and Financial Consultant. This evidence shows that Mrs. Hill was retained around mid-January 2017 to do a valuation of his 40% interests in the law firm. This evidence was presented to answer one of the stated concerns of the applicants that the first respondent was not taking active steps to value this interest. The first respondent uses the retention to show that an independent expert has been retained to perform this valuation and that this too should be weighed against any appointment of a receiver.

[71] I am of the view, however that this does not weigh against the conclusions drawn so far. If anything, this in the context of everything else in this case, supports the view of the applicants that this is but another delaying tactic of the first respondent to keep his affairs to himself and to ensure that the applicants do not get to see into his financial affairs. I have arrived at this finding for several reasons.

[72] First, there was no reason for this evidence to be filed during this hearing itself. This deponent was retained in mid-January 2017. The first respondent knew that the applicants were keen to learn of the value of his 40% interests in the Law Firm. He knew that they were grounding their application in part because as they stated[13] when this application was made that it is their belief that no professional and independent valuation would be forthcoming. Yet he kept this information to himself only to disclose it during this hearing. It is easy to infer that in the context of everything, and I have drawn one more inference on the way to my findings; this inference being that this last minute disclosure was to either delay the matter or to make it difficult for the court hearing the matter to have the benefit of a structured response from the other side.

[73] Second, there were questions raised about Mrs. Hill's independence having regard to her own statements contained in her first affidavit. She stated at paragraph 4: "As a Forensic

[13] See the second affidavit of Richard Vento at paragraph 15 (e).

Accounting Specialist and the principal of Hillcomspec Consultancy Ltd., I am authorized to swear this affidavit in opposition to the application for the Appointment of a Receiver and the Application for a Charging Order." When this was pointed out during the hearing a supplemental was filed where she then corrected this by saying: "I am authorized to swear this affidavit on request of Mr. Keithley Law who is in opposition to the application for the Appointment of a Receiver and the Application for a Charging Order." This court is not at all comfortable about this evidence. What is also significant for me, is that nowhere in either of these affidavits does she state that she is proceeding to perform this function as an officer of the court in accordance with CPR rules governing the independent approach of experts.

[74] To go on, this is a man who states that he has no personal bank account, yet he does not deny that in relation to the entities that AXA Offshore Management manages, he is the signatory of at least 40 bank accounts. He has clearly demonstrated his adeptness at managing various entities to hold and move funds. He has set up a SPV to manage his personal mortgage payments. He contends that most if not all of his present income goes directly to this SPV. This SPV itself fails to adhere to the Companies Act to keep proper records; it literally operates in the dark. There is no express explanation as to how he otherwise survives and meets daily outlays (his attorney suggested that, he could very well be a 'kept man' as his wife is a doctor who continues to work). If he was being financially supported, this should not have been for the court to speculate on; it surely could not be a proper inference. A man in his position should not leave a court to wonder about these matters. He should ensure that proper accounts are given to the court. Any difference or shortfall between his income and his expenses should be explained in a case of this nature. He is an expert in his field. He should not have to be told this. But this has been his general approach. I find that this is deliberate on his part.

[75] This is a man who has been slow to disclose very crucial aspects of his financial worth. He gives information grudgingly and controls not only how much is disclosed but when it is, as with Mrs. Hill's appointment and work. In relation to an allegation that he had transferred an asset holding company to his first cousin, he responded that this was a 'scandalous'

allegation and it should be struck; this court was not sure that he was in fact denying it or that he was saying that it was irrelevant.[14] Companies around him are beginning to cease trading. His connection to the fourth respondent reveals that his control over that entity is not insignificant. When that company was shown to own assets in the Cayman Islands, other companies presented themselves to assert that those funds belonged to them. The fourth respondent demurred. One of those companies has a clear connection to his management company. The 'respondents' are then able to make an offer of cash and assets which they assert is worth more than US$9 million. In making this offer it is stated that those funds and assets (Class A shares etc) are owned by those two unrelated companies which have no liability to this judgment debt. While stating that the 'respondents' will hand over all their interests in those Class A shares etc. no reason is being provided why this offer is being made by these unrelated companies. If the cash and assets are solely owned by these unrelated companies, why would they hand over US$9 million (cash and worth) to settle this debt? While the applicants' concern is real that the identified securities may be worthless, and the respondents are pressing for an acceptance of this offer to hand over considerably less than owed, there is my view sufficient evidence to believe that the first respondent indeed has sufficient other funds and assets to substantially meet this judgment debt. I believe that there is a real likelihood that the first respondent has interests in funds greater than which he is disclosing which in my view equals and is perhaps even greater than whatever is being held in the Cayman Islands and being offered by way of settlement.

[76] It is also likely in my view, having regard to all the above that a Receiver, once seized of the kind of control of which he would be clothed by an order of court, would be able to discover whatever connections they are between the respondent and those assets which have been discussed above. In this kind of matter, the investigatory component of the Receiver's role comes under greater focus.

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[14] (Incidentally, his response related to paragraph 15(b) of the second affidavit of Mr. Vento which contained a number of other matters, some of which he had already accepted as being true. Para. 15(b) of Vento's second affidavit reads: "The first named respondent was, to all appearances, the attorney who structured the complex networks and lawyers in Anguilla, Nevis and other off-shore entities."

B. AMOUNT OF THE JUDGMENT DEBT

[77] A receivership order is not a trivial matter. The Award which became the judgment debt, however, is a substantial sum. It is in excess of US$7 million. Proceedings are going on in several jurisdictions to seek to enforce and recover this judgment debt.

[78] In the view of the court, the outstanding amount on this debt lends to an order being made.

C. COST OF APPOINTING A RECEIVER

[79] The applicants have proposed as Receiver, Mr. Andrew Morrison, Senior Managing Director in the Corporate Finance and Restructuring Segment of FTI Consulting. He has consented to the appointment. The evidence is that he has over seventeen years' experience in liquidation matters. He is said to have previous experience as a Receiver and Liquidator in the Cayman Islands. FTI Consulting is presented as a global advisory firm with offices in several Caribbean islands. This firm is presented as having substantial professional indemnity insurance cover.

[80] On the application, the hourly fees for FTI consulting were given as follows:

"Senior Managing Director	*US$750.*
Director	*US$660.*
Senior Manager	*US$575.*
Manager	*US$490.*
Assistant Manager	*US$400.*
Senior Case Manager	*US$345.*
Case Administrator	*US$215.*

[81] At the request, and on an indication that an order was being proposed, both sides made additional submissions on fees.

[82] Additional submissions were filed on the request of the court. The respondent urged the court to limit the fees payable to the receiver and his associate to no more than was considered reasonable by the court in the St. Kitts and Nevis context in the Scenic Railway

case[15] which involved a judgment debt of just over EC$3million. In that case the court approved receiver fees of EC$210.00 per hour and associates fees of EC$165.00 per hour.

[83] The applicants suggested a reduced schedule of hourly fees as follows:

"Receiver	*US$475.*
Director	*US$370.*
Assistant Manager	*US$220.*
Case Administrator	*US$110."*

[84] This court has considered that the work that is involved in this matter would require considerable investigation and for this reason would be different to that which obtained in the Scenic Railway case. For this reason, the court considers that the reduced fees suggested by the applicants are not unreasonable in context of the work which is likely to be involved in this case.

WHETHER IT IS JUST AND CONVENIENT

[85] A court concerned with the question of whether it is just and convenient must have regard to all the circumstances of the case and the three factors set out above.

[86] The appointment of a receiver has at its core the recovery of the judgment debt from the income or capital assets of the judgment debtor. It is not a jurisdiction which should be lightly exercised. The court should expect that other methods of enforcement have been resorted to and have either failed to satisfy this debt. A court must be concerned about the state of other enforcement proceedings and whether it is but a matter of some more time before the judgment debt is to be satisfied; in other words a receiver in these cases ought not to be appointed simply to satisfy a judgment creditor who is simply anxious to have his money soonest in a case when a bit more time will see the settlement of the debt. A court

[15] Anguilla Services Ltd v St. Kitts Scenic Railway Ltd. No. 144 of 2011

is also to be concerned that the appointment of the receiver is financially practical in that the fees and the costs of the receiver does not weigh heavily on the assets of the debtor. The court must always be concerned that the order is proportionate.

[87] The court must also be concerned that the appointment will have practical utility, likely leading to the enforcement of the judgment debt so that the judgment creditor may enjoy the fruits of the judgment.

[88] In this case, the first respondent, the judgment debtor, Mr. Lake being jointly and severally liable for this debt has not himself paid a single cent on this debt. Even costs incurred in these proceedings so far amounting to drops in the bucket when compared to this judgment debt has not been paid. It appears that all that has been 'allocated' to this debt from proceedings in Texas is a sum of US$500,000.00. It has not yet been shown that this has actually been applied to the debt. Whether it has or not hardly matters in the context of everything else.

[89] This Judgment Debtor's personal non-payment is to be taken in context of his many statements he ought not to have been made personally liable for this debt. This is an underlying thread and appears to have played some part in his *liaise faire* approach in disclosing matters related to his financial worth. His approach to valuing his 40% share in the Law Firm shows the pace at which he moves on this debt; it would seem that he would rather matters continue to be delayed. His late disclosure of the fact that a financial person had been appointed to value the worth of AXA Offshore Management Limited and his interests in the Firm also fits in his general approach in reluctantly providing information.

[90] All of this in context of this court's conclusions on the amount likely to be recovered and this respondent's skilled ability to move funds and assets, raises a real concern that the applicants may in the end not enjoy the fruits of the judgment. The evidence shows that companies around this respondent have been shutting down their operations, and at least on one occasion, another company which the first respondent is connected, entering the

fray to claim assets once believed to be owned by one of the respondents. All of this raises real concerns that steps may be taken to frustrate enforcement in this case.

[91] This receiver will have the power to take independent steps to assess and value identified assets, and will also have the power to investigate and seek to identify other assets which may exist and from which income may be recovered or aid in other methods of execution. In this regard, he shall have full and unhindered access to all financial records and dealings of the first respondent wherever located. For these reasons in the context of this court's analysis and findings, it is to my mind just and convenient that a receiver be appointed immediately.

[92] I have had regard to the pieces of real estate which is jointly owned by the first respondent and third parties which have been ordered to be sold and which order is now the subject of a stay by the Court of Appeal. It would seem that third party's interests are issues for the Court of Appeal. The appointment of the receiver will operate consistently with the stay as the first order only related to the sale of these properties. The receiver will have no power of sale in relation to these properties, but there is no reason for him not to collect whatever income that is derived from them, subject to the third parties' rights that exists. This court would be keen to hear applications from those third parties if the need should arise.

[93] This court has also considered the fact that the known income of the first respondent is presently being used to service in large part, his mortgage. Under this order, the receiver will be entitled to collect those monthly sums but these will continue to be paid to the bank. From the respondent's own lips, there is nothing he has which goes towards his upkeep, so that the court is unable to make any allowances for this.

[94] What the receiver will be concerned about, is the recovery of any and all income or proceeds from any source whatsoever and wherever this order may be enforced. The receiver will be entitled to take all steps to locate and identify all sources of income lawfully due to the first respondent, and be entitled to receive such income and proceeds. All financial records and accounts of any asset or business owned whether wholly or together

with any other person, held by the first respondent or any third party/entity shall be provided to the receiver for his examination as if he were standing in the shoes of the first respondent. If properties are to be sold the receiver shall be required to seek and obtain an order of sale from the court in relation to that property. The order of receivership therefore shall operate as an injunction in *personam* against the first respondent, whether personally, or through his servants and or agents from taking any steps to dissipate, alienate or dispose of any income or assets wherever located.

[95] The court has also been concerned with the costs of this receiver and intends that expenses associated with this receivership should be kept at a minimum. For this reason and that in any event the court should have oversight of this process to ensure that there are real results of recovering funds to satisfy this judgment debt within the shortest possible time. This in turn will operate to ensure that this order remains proportionate.

[96] The order of the court is therefore as follows:

1. That Mr. Andrew Morrison of FTI Consulting be and is hereby appointed receiver over the property and assets of Keithley Lake subject to the exceptions set out in paragraph 2. The requirement of providing security is waived. Hourly fees are capped as follows: *Receiver US$475.00 Director US$370.*00, *Assistant Manager US$220.00, Case Administrator US$110.00;*

2. That the receiver shall be entitled to recover the monthly sum of US$13,320.00 due to the respondent from Keithley Lake and Associates but such sum is to be allocated to the payment of the mortgage debt due to the National Commercial Bank of Anguilla. The receiver shall not be entitled to sell any of the properties which are subject to the order of stay by the order of the Court of Appeal. Any order for sale shall first be approved by this court.

3. That from the date of this order, the respondent, Keithley Lake, his agents and servants shall cooperate fully with the receiver, including in the following way, namely by providing within two weeks of being served with this order, (a) information and documents related to all his financial assets howsoever held and wherever situate; (b) a list of all financial entities in which the respondent has any share or any managerial role; (c) a list of all financial entities which have been established by AXA Offshore Management Limited or the respondent via any other medium; (d) the details together with any documentation of the bank account to which any monies due to the

respondent or to any of the entities set up by the respondent or AXA Offshore Management Limited have been or are due to be remitted; (e) the details and documentation of any contracts which have been entered into by the respondent related to any of the entities established by AXA Management Company; (f) such other information as may be reasonably required by the receiver to execute this order. This duty to provide information and documents shall continue throughout the life of this order.

4. That the receiver be entitled to do the following: (a) to take all steps to recover the sum owed on the judgment debt; (b) take all steps to identify all property and assets in which the respondent has any interest; (c) to bring, defend, continue or compromise any proceedings or any other action in any jurisdiction as he may think fit, (subject to that jurisdiction's recognition of this order) as receiver, to collect, gather in and/or recover any sums due and owing to the respondent; (d) to take all other steps as may be reasonably necessary to carry out the terms of this order.

5. The terms of this order will affect the following persons in a country or state outside the jurisdiction of this court: (A) the defendant or its officer or agent appointed by power of attorney (B) any person who—(1) is subject to the jurisdiction of this court; (2) has been given written notice of this order at his residence or place of business within the jurisdiction of this court; and (3) is able to prevent acts or omissions outside the jurisdiction of this court which constitute or assist in a breach of the terms of this order; and (C) any other person or entity, only to the extent that this order is declared enforceable by or is enforced by a court in that country or state.

6. Nothing in this order shall, in respect of assets located outside Anguilla require the respondent to disobey the order of any court of competent jurisdiction in relation to such assets.

7. An injunction is granted against the defendant, whether personally, or through his servants and or agents from taking any steps to dissipate, alienate or dispose of any income or assets wherever located.

8. This Order shall remain in force until the 31st January 2018.

9. On or before the 31st December 2017, the Receiver shall present to the court, a report of the receivership.

10. Costs is reserved and will be addressed when this order is discharged.

11. A penal notice is to be attached to the order to be handed out with this decision.

[97] The court is grateful to the parties for their assistance and their patience.

Darshan Ramdhani
High Court Judge (Ag.)

By the Court

Registrar