



IN THE EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF THE VIRGIN ISLANDS
IN THE COURT OF APPEAL

Submitted Date:26/10/2021 15:49

Filed Date:26/10/2021 15:49

Fees Paid:543.02

INTERLOCUTORY APPEAL UNDER CPR 62.10
BVI CIVIL APPEAL NO. _____ OF 2021

BETWEEN:

MULTIBANK FX INTERNATIONAL CORPORATION

Appellant/Third Defendant

and

VON DER HEYDT INVEST S.A.

Respondent/Claimant

NOTICE OF APPEAL

TAKE NOTICE that the Appellant being the Third Defendant in the court below hereby appeals to the Court of Appeal against the decision contained in the orders dated 4 and 12 October 2021¹ copies of which are attached to this Notice. Leave to appeal is not required pursuant to s.30 of the Eastern Caribbean Supreme Court (Virgin Islands) Act.

1. Details of order appealed:

The Appellant appeals against the Order of the Honourable Mr Justice Adrian Jack dated 12 October 2021, by which the Judge continued until trial or further order a worldwide freezing order (the “WFO”) granted *ex parte* on 26 April 2021 and dismissed the Appellant’s application by notice dated 16 June 2021 to discharge the WFO.

2. Details of –

(a) any findings of fact:

¹ At least insofar as it relates to the costs of MBFX’s application to discharge the WFO. As of the time of drafting, the order of 12 October 2021 has not been sealed.

**(b) any finding of law:
which are challenged.**

The Judge made or purported to make a number of findings of fact and/or mixed fact and law which are addressed in the Grounds of Appeal, notwithstanding that this was an interlocutory application and the Judge did not hear live evidence.

The Judge's key findings were:

- (1) That the Respondent ("VDHI") had made out a good arguable case of fraud, including finding that proceedings in which a Tomlin Order was made were 'collusive';
- (2) That the claims set out by the Appellant ("MBFX") in the discharge application did not 'stand much analysis';
- (3) That VDH AG was acting in its own capacity and/or only acted as agent for Mex Securities for limited purposes;
- (4) That the claims which were the subject of the Tomlin Order in the Mex Clearing proceedings had been released by a settlement agreement in proceedings in Australia;
- (5) That VDHI had, on the ex parte application on 26 April 2021, "standing" to bring claims for €36 million (Judgment [82-83]);
- (6) That VDHI had, on 26 April 2021, set out sufficiently how it would obtain an enforceable money judgment which could support a freezing injunction;
- (7) That there was no non-disclosure, misrepresentation or unfair presentation by the Respondent on 26 April 2021;
- (8) That there was a real risk that MBFX would dissipate its assets;
- (9) That it was just and convenient to grant and/or continue the WFO.

2. Grounds of Appeal:

- (1) The Judge erred in unfairly failing to hear the MBFX's application for an adjournment of the hearing, and not allowing the MBFX to make submissions on that application. The Judge erred in failing to allow MBFX's application for disclosure by notice dated 20 September 2021 ("Disclosure 2") to be heard (including by a different judge) and/or not directing the application to set aside or vary the WFO be adjourned pending determination of this and service of further evidence arising from further disclosure.
- (2) The Judge erred in failing to adjourn the hearing as requested by MBFX. Without derogating from the generality of the foregoing, the Judge erred by failing to take into account the MBFX's then pending application for leave to appeal to the Eastern Caribbean Court of Appeal against the Judge's order dated 16 August 2021 dismissing parts of the MBFX's application for disclosure by

notice dated 11 August 2021 (“Disclosure 1”) and for other relief, including a stay of the proceedings before the Judge. MBFX relies on the contents of its application for leave to appeal and draft notice of appeal against the order of 16 August 2021. These including the grounds of appeal are incorporated in these grounds of appeal.

- (3) The Judge arbitrarily and/or unfairly excluded evidence relevant to issues which arose, including Schirrer 3 and the witness statement of Mr Schirrer dated 20 September 2021, Kattoura 8, Yahya Taher 3, Priess 5 and Philippe 3 and did so without considering consequences of doing so and whether it was fair to do so. The Judge excluded the evidence without reading it and/or without hearing submissions as to its contents (including because of the insufficient time allowed to MBFX’s Counsel to make submissions on the documents) and/or its relevance and/or the unfairness of excluding it and without giving reasons (which he could not give because of the unfair procedure adopted).
- (4) The Judge erred in the conduct of the hearing in terms of timing and scope of submissions. Without derogating from the generality of the foregoing, the Judge:
 - (i) Imposed time limits on the MBFX’s submissions at the hearing, which did not permit proper presentation of the MBFX’s case. These time limits were imposed arbitrarily and unfairly without regard to the issues which the MBFX needed to cover and the volume of documentation and its complexity;
 - (ii) At the 28/29 July hearing, the Judge sought to arbitrarily and/or unfairly to divide up issues on which he was prepared to hear counsel without regard to fact that the various issues arising on the discharge application overlapped. The Judge sought to direct argument on preliminary issues;
 - (iii) At that hearing the VDHI was allowed as much time as they wanted and/or was allowed a day and 2 hours to address the judge without any guillotine on good arguable case and risk of dissipation;
 - (iv) VDHI did so when there was already in place an injunction until further order and it had no burden to justify that injunction;
 - (v) The Judge restricted leading counsel for the MBFX in the 2 hours left after the VDHI’s opening on 28/29 July to the issues of good arguable case, risk of dissipation and non-disclosure. Those had to be addressed without the documents which were the subject of Disclosure 1 including the CSSF Report which VDHI had without justification not disclosed and consequential evidence;
 - (vi) The Judge accepted as reasonable on 29th July that leading counsel would need to have 2 days to make submissions at the resumed hearing on 21-23 September. This encouraged leading counsel to pace his submissions accordingly and prepare submissions for the resumed hearing on this basis. The Judge arbitrarily and/or unfairly at the resumed hearing departed from what he had previously said and imposed time limits which were inconsistent

with what had previously been said by the Judge and/or which were imposed without regard to what leading counsel had to cover or the preparation for that hearing. This included new material not available at the time of the discussion on 29th July.

- (5) The Judge misunderstood, and/or mistakenly disregarded the relevance of MBFX's rights against Mex Securities based on the Client Agreement, and the consequences of that Agreement and breaches of that Agreement by Mex Securities including through conduct of its agent and investment manager, VDH AG. This was a material part of MBFX's case before the judge. Without derogating from the generality of the foregoing, the Judge overlooked the rights of MBFX to set off sums due to it or claimed by it from sums held in Mex Securities' account and its relevance to the issues which arose.
- (6) The Judge erred in respect of claims of MGW in unjust enrichment in respect of outlays against Mex Securities. This included but was not limited to benefits conferred on Mex Securities by MGW at its expense through MGW agreeing to and implementing arrangements for the swap of old notes for new notes and the benefits obtained for Mex Securities in the course of and arising from transactions connected with the swap.
- (7) The Judge erred in respect of the evidence and admissions of the course of conduct of regulatory failings and irregularities and breaches of prospectuses from in or about 2017 onwards on the part of VDHI and/or its investment manager and agent VDH AG and its relevance to the discharge application. Without derogating from the generality of the foregoing the Judge mistakenly stated that they were "not relevant to VDHI's claim" [105] and that the regulations were not binding on VDH AG which as Investment Manager and agent for VDHI was concerned in ensuring UCITS compliance and /or whose conduct placed VDHI in breach of the regulations and/or the prospectuses specified in the CSSF Report.
- (8) The Judge erred on the issues which arose from VDH AG acting as the investment manager of and agent for VDHI and the legal consequences of this. Without derogating from the generality of the foregoing, VDHI was in breach of the regulatory requirements and the prospectuses for the 3 Funds which held notes, and VDHI knew this and/or had knowledge through VDH AG and Mr Gollits its investment manager and agent that there had been a course of conduct since in or about 2017 of regulatory failures by VDHI and VDH AG for which both were responsible and VDHI and VDH AG and each of them were acting unlawfully and/or in breach of the prospectuses and doing so knowingly for financial gain . Furthermore VDHI and VDH AG and each of them at all times misrepresented the position to MGW and to MBFX in a course of conduct and did so dishonestly and fraudulently, or alternatively, they did so negligently, and/or procured through the same the outlays made from 2017 onwards.
- (9) The Judge misunderstood the relevance to the issues which arose of VDH AG acting as the investment manager for Mex Securities and also as its agent on its behalf in procuring and obtaining outlays for the benefit of Mex Securities including but not limited to cash injections.

- (10) The Judge overlooked the relevance to the issues which arose and/or the claims made by VDHI and/or the rights or entitlements of noteholders and/or to claims which might be made by noteholders of (i) VDH AG being the agent of each wealth client and noteholder, and/or (ii) VDHI being agents of investors in the 3 Funds acting on their behalf and as their agents and/or (iii) VDH AG being agents of VDHI and acting on their behalf.
- (11) The Judge failed to identify the issues which arose in connection with the Australian settlement agreement barring available defences, failed to consider them and/or misunderstood them and/or erred in respect of the effect of that settlement agreement.
- (12) The Judge erred in failing to make findings of material non-disclosure and misrepresentation by the VDHI at the *ex parte* hearing, and/or of breaches of the duty of fair presentation, and failed to address the consequences of these. The Judge's holding on the effect of the Australian settlement agreement showed that the Judge approached the question with a closed mind and is an instance of the Judge's apparent bias;
- (13) Without derogating from the generality of the foregoing, the Judge ought to have found material misrepresentations and/or material non-disclosure in connection with:
 - (i) Whether the funds in the trading accounts were held on trust for the noteholders including the terms of the notes, and the expert report on trusts in the Australian proceedings;
 - (ii) Breaches by Mex Securities of the Client Agreement between Mex Securities and MBFX and/or misrepresentations in respect of information provided by Mex Securities and/or its agent VDH AG in connection with that agreement and their relevance to the circumstances at the time of the *ex parte* application;
 - (iii) The lying by Mr Gollits on or about 2nd and 3rd December 2019;
 - (iv) The Presentation on 5th November 2019, the Undertaking dated 26th November 2019, the Deed of Affirmation, and the information and/or representations made and/or contractual undertakings given to Mex Australia and then to MBFX provided from 2017 onwards that there was compliance with applicable laws and/or that the old notes and the new notes were held in circumstances of UCITS compliance by the UCITS Funds managed by VDHI and/or that the notes were UCITS eligible and compliant;
 - (v) The existence of the outlays and their amount;
 - (vi) The course of conduct of regulatory failures by VDHI and VDH AG for which both were responsible each of them were acting unlawfully and/or in breach of the prospectuses and/or the course of conduct of misrepresentations and/or of breaches of the Client Agreements with Mex Australia and MBFX arising from the same;
 - (vii) The fraud perpetrated on the MultiBank Group by Mr Gollits from at least 2017 onwards;
 - (viii) VDHI's knowledge of and/or involvement in proceedings in Luxembourg;
 - (ix) The involvement and/or role of VDH AG in the BVI proceedings;
 - (x) VDHI's receipt of information relating to the Mex Clearing proceedings;

- (xi) Without derogating from the generality of the foregoing, what information including documents were provided by or available from Mr Gollits and VDH AG and/or what enquiries had been made by VDHI of them for the purpose of the ex parte application; and
 - (xii) The various agency roles of or performed by VDH AG for VDHI, and Mex Securities and their consequences.
- (14) The Judge erred in not finding that these and each of them were not “innocent” and in not finding that the non-disclosure and misrepresentation included fraudulent non-disclosure and misrepresentation.
- (15) The Judge erred in relying upon money claims which were not part of the basis for granting the injunction and/or disregarding the proprietary trust basis advanced on the ex parte application by VDHI and subsequently abandoned.
- (16) The Judge ought to have found that the UCITS Funds on behalf of which the VDHI claims to act do not have legal personality and do not have claims which can give rise to a money judgment in their favour or in favour of the Noteholders. Without derogating from the generality of the foregoing, it was common ground that the UCITS Funds did not have legal personality, and the Judge erred as to the consequences of this.
- (17) The Judge ought to have found that VDHI had no right and/or entitlement to bring a money claim for €36 million (or €43 million) or any other sum. Without derogating from the generality of the foregoing, the Judge overlooked and/or failed to consider relevant matters and/or failed to draw the right conclusion from such matters, including without derogating from the foregoing:
- (i) VDHI and/or the noteholders did not have a good arguable case on liability causation and quantum justifying the WFO or in respect of an eventual money judgment. This included claims alleged in the statement of claim in tort as or in respect of setting aside the Tomlin order;
 - (ii) The noteholders were not entitled to bring claims otherwise than against Mex Securities, and VDHI and the Noteholders were not entitled to outflank entitlements or claims or defences available to MGW or MBFX against Mex Securities. VDHI were in no better position than the noteholders;
 - (iii) The Judge erred in that the evidence was that the VDHI represented only a small percentage of the noteholders. The losses suffered by those noteholders if any fell far short of or did not equate to the sum transferred out of Mex Securities’ account or justify the value figure in the terms of the WFO. That value figure also was not discounted to reflect the notes held by Mr Taher;
 - (iv) The VDHI’s claim to set aside the Tomlin Order would be limited to a restitutionary claim and not be for damages and/or would not have the effect of unwinding the payment from Mex Securities to Mex Clearing, which was on the basis of the Settlement Agreement which predated the Tomlin Order; and/or

- (v) Irrespective of the Tomlin Order and/or the settlement agreement Mex Securities had liabilities to MGW and/or MBFX and those liabilities were properly to be enforced and/or discharged by Mex Securities from the credit balances on the trading accounts of Mex Securities with MBFX, and/or MGW, and/or MGW and MBFX had entitlements or claims to that end and/or bona fide entitlements or claims to that end.
- (18) The Judge disregarded and failed to apply the procedural safeguards which are mandatory for the grant of an ex parte Mareva injunction, and failed to appreciate the consequences of the absence of compliance with those safeguards. Without derogating from the generality of the foregoing, the Judge overlooked the need for compliance with the procedural safeguards of identifying money claims to which the Mareva Injunction was to be ancillary and complying with the procedural requirements set out by the House of Lords in *Fourie v Le Roux*.
- (19) The Judge on the ex parte application disregarded the need for service of a claim form and a statement of claim and disregarded the need to give directions for the commencement of a claim and/or for undertakings including the undertaking to issue the claim by a specific date. The Judge also overlooked the need properly to consider fortification of the cross- undertaking as to damages and/or was misled by VDHI on the ex parte application as to what losses might be caused by the Mareva Injunction and/or there was material non disclosure by VDHI in respect of these and/or unfair presentation.
- (20) The Judge erred in finding there was a real risk of dissipation.
- (21) The Judge erred in failing to consider whether the WFO was just and convenient as a matter of discretion. Without derogating from the generality of the foregoing, the Judge failed to take into account the fact that MBFX is a trading company which could suffer substantial losses from the imposition of a WFO at [110ff] and that its assets were limited to assets required under the regulatory regime under which it operates.
- (22) The Judge erred in failing to hear full argument on the MBFX's application to set aside the representative order made on 21 June 2021, which was closely associated with the discharge application, in excluding consideration of the representative order from the hearing of the discharge application and in failing to hold that the representative order should be set aside.
- (23) The Judge failed to identify the issues on the application before him, the arguments on those issues, the evidence in support of those arguments and failed to give reasons, or adequate reasons, in relation to those issues. The Judge failed to determine those issues properly and fairly, taking into account all of the evidence.
- (24) The Judge misread and misunderstood the evidence before him, and overlooked or failed to take into account relevant evidence. Without derogating from the generality of the foregoing, the Judge failed to consider all the evidence relevant to each issue before him and to marshal and assess the evidence fairly and objectively.

- (25) The Judge took into account irrelevant matters, failed to take into account relevant matters, and came to a decision which was plainly wrong.
- (26) The Judge relied on the facts in a law report of a decision at first instance of a previous case 11 years previously in which a committal order had been made against Mr Taher. The facts concerning that committal order were not covered in evidence in these proceedings. The committal order had been set aside by the Court of Appeal and this had been ordered by the Court of Appeal by consent and with knowledge of the appeal and its grounds for challenging the committal order and being satisfied that it was appropriate to set it aside. The order of the Court of Appeal was provided to the Judge so as to avoid there being any prejudice arising from the Law report which was cited on issues of law concerning submission to the jurisdiction by Mex Clearing. Furthermore the judge took the facts in the law report of the decision at first instance into account on risk of dissipation when no submissions had been made or invited for that purpose and when it was irrelevant to current risk of dissipation by MBFX and/or it was unfair to rely on it for that purpose.
- (27) There was apparent bias on the part of the Judge and the order should be set aside. Without derogating from the generality of the foregoing (i) there is, in the eyes of a reasonable observer, a real risk that the Judge approached the case with a closed mind or and/or otherwise than with an objective view and/or a real possibility that the judge might have 'pre-judged' the case and the conduct of the Judge was inconsistent with addressing the issues which arose with an open mind and/or (ii) there was a course of conduct of the Judge of disregarding procedural protections MBFX in respect of hearings before him and/or the orders made by him in the course of the proceedings and/or acting unfairly towards MBFX.

3. Order sought:

- (1) An order setting aside the Orders of Mr Justice Jack dated 4 and 12 October 2021;
- (2) An order discharging the WFO;
- (3) Any necessary orders consequential on the discharge of the WFO; and
- (4) Provision for the MBFX's costs.

4. Any specific power which the court is asked to exercise:

- (1) To set aside the orders of Jack J;
- (2) To discharge the WFO;
- (3) To make any further orders including case management orders necessary on the discharge of the WFO; and
- (4) To order the Respondent to pay the MBFX's costs of the appeal.

Under CPR 11.16, CPR 26.1(2)(w) and CPR 62.20

5. Details of the other parties to the proceedings in the court below:

Name	Address for Service
Von Der Heydt Invest S.A.	Carey Olsen, Rodus Building, Road Reef Marina, PO Box 3093, Road Town, Tortola, British Virgin Islands
Mex Securities SARL	Not represented
Mex Securities SARL	Lanx Lancis, 2 nd Floor Geneva Place, 333 Waterfront Drive, PO Box 3339, Road Town, Tortola, British Virgin Islands

The Court Office is located at the Registry of the High Court, 3rd floor, Sakal Place, PO Box 418, Road Town, Tortola, British Virgin Islands.

Telephone: +1 (284) 468 5001 or +1 (284) 468 3701 (ext.) 5001, 5153

Email: supremecourt@gov.vg / commercialdivisionvi@gov.vg.

The Court Office is open between 9:00 am and 3:00 pm, Monday to Friday except public holidays.

The address for service of the MBFX is:

Walkers

171 Main Street

PO Box 92

Road Town, Tortola

British Virgin Islands

Tel: (284) 494 2204

Fax (284) 494 5535

Ref: OC/SH/D11193

Road Town, Tortola

British Virgin Islands

Tel: (284) 852 1700

Ref: 8053748/81163897/1



IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
VIRGIN ISLANDS
COMMERCIAL DIVISION
CLAIM NO. BVIHC (COM) 73/2021

Submitted Date:26/10/2021 09:51

Filed Date:26/10/2021 09:51

Fees Paid:72.59

BETWEEN:

VON DER HEYDT INVEST SA
(as a representative party pursuant to the Court's order dated 21 June 2021)

Claimant

-and-

(1) MEX CLEARING LIMITED
(2) MEX SECURITIES S.A.R.L
(3) MULTIBANK FX INTERNATIONAL CORPORATION

Defendants

ORDER

(Handing down hearing on 4 October 2021)

BEFORE: The Honourable Justice Adrian Jack [Ag.]

DATE: 4 October 2021

ENTERED: October 2021

UPON the Court having granted a Worldwide Freezing Injunction on 26 April 2021 (as subsequently continued until further order on 3 May 2021) (the "**Freezing Injunction**") against the Defendants in Claim No. BVIHC (COM) 73 of 2021 ("**Claim**")

AND UPON the following applications (*inter alia*) being before the Court in the Claim at the hearings on 28 and 29 July 2021, and 21-23 September 2021:

- (a) the Claimant's Application by notice dated 29 April 2021;
- (b) the Third Defendant's Application by notice dated 16 June 2021 (by paragraph 1 thereof) to discharge the Freezing Order (the "**D3 Discharge Application**");
- (c) the First Defendant's Application by notice dated 6 July 2021 (by paragraph 3 thereof) to discharge the Freezing Order ("**D1 Discharge Application**");

AND UPON the Court's order dated 23 September 2021

AND UPON the Court handing down its judgment on the above applications

AND UPON hearing Tim Penny QC, Alexander Cook and Simon Hall for the Claimant, John Carrington QC, for the First Defendant and Eleanor Morgan for the Third Defendant, and no one appearing on behalf of the Second Defendant

IT IS ORDERED THAT:

1. The Freezing Injunction is hereby continued, until trial or further order of the Court.
2. The D3 Discharge Application and the D1 Discharge Application are dismissed.
3. A copy of the Court's judgment dated 4 October 2021 shall be provided by the Registrar to the British Virgin Islands Financial Services Commission forthwith and access to electronic copies of the papers in these proceedings be given to the British Virgin Islands Financial Services Commission.
4. All other matters before the Court stand adjourned to a further hearing on Tuesday 12 October 2021 with a time estimate of one day.
5. Costs reserved to the hearing on 12 October 2021.

BY ORDER OF THE COURT

REGISTRAR

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
VIRGIN ISLANDS
COMMERCIAL DIVISION

CLAIM NO. BVIHC (COM) 73/2021

BETWEEN:

VON DER HEYDT INVEST SA
(as a representative party pursuant to the Court's
order dated 21 June 2021)

Claimant

-and-

(1) MEX CLEARING LIMITED
(2) MEX SECURITIES S.A.R.L
(3) MULTIBANK FX INTERNATIONAL CORPORATION

Defendants

ORDER

(Handing down hearing on 4 October 2021)

CAREY OLSEN

Legal Practitioners for the Claimant
Rodus Building, Road Reef Marina, PO Box 3093
Road Town, Tortola, British Virgin Islands



IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
VIRGIN ISLANDS
COMMERCIAL DIVISION
CLAIM NO. BVIHC (COM) 73/2021

Submitted Date:20/10/2021 13:36

Filed Date:20/10/2021 13:36

Fees Paid:72.59

BETWEEN:

VON DER HEYDT INVEST SA
(as a representative party pursuant to the Court's order dated 21 June 2021)

Claimant

-and-

(1) MEX CLEARING LIMITED
(2) MEX SECURITIES S.A.R.L
(3) MULTIBANK FX INTERNATIONAL CORPORATION

Defendants

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
VIRGIN ISLANDS
COMMERCIAL DIVISION
CLAIM NO. BVIHC (COM) 2020/0215

BETWEEN:

VON DER HEYDT INVEST SA

Applicant

-and-

MEX CLEARING LIMITED

Claimant / First Respondent

-and-

(1) MEX SECURITIES S.A.R.L

First Defendant / Second Respondent

(2) MULTIBANK FX INTERNATIONAL CORPORATION

Second Defendant / Third Respondent

ORDER

(Consequential Hearing and applications unrelated to the Freezing Injunction)

BEFORE: The Honourable Justice Adrian Jack [Ag.]

DATE: 12 October 2021

ENTERED: October 2021

UPON the Court having granted a Worldwide Freezing Injunction dated 26 April 2021 (as subsequently continued until further order on 3 May 2021) (the "**Freezing Injunction**") against the Defendants in Claim No. BVIHC (COM) 73 of 2021 (the "**Claim**")

AND UPON the Court in the Claim having made an order dated 21 June 2021 appointing the Claimant as a representative party ("**Representative Order**") made ex parte following the Claimant's ex parte Notice of Application dated 21 June 2021 ("**Representative Party Application**")

AND UPON the Court in the Claim having dismissed the Third Defendant's Application by notice dated 20 September 2021 insofar as it sought an adjournment of applications (a) to (c) listed below under the heading "Freezing Injunction" and having otherwise adjourned the application, including in relation to production and disclosure of documents ("**Disclosure 2**")

AND UPON the Court having excluded as evidence, on 21 September 2021, the Third Expert Report of Cedric Schirrer, the Eighth Affidavit of Mr Kattoura, the Third Affidavit of Mr Yahya Taher, the Fifth Affidavit of Mr Priess, the Third Expert Report of Prof Dr Denis Philippe and the Witness Statement of Cedric Schirrer

AND UPON the following applications (*inter alia*) being before the Court in the Claim:

Freezing Injunction

- (a) the Claimant's Application by notice dated 29 April 2021;
- (b) the Third Defendant's Application by notice dated 16 June 2021 (by paragraph 1 thereof) to discharge the Freezing Order ("**D3 Discharge Application**");
- (c) the First Defendant's Application by notice dated 6 July 2021 (by paragraph 3 thereof) to discharge the Freezing Order ("**D1 Discharge Application**");

Service of the Claim Form

- (d) the Claimant's Application by notice dated 6 July 2021 for orders regarding service of the Claim Form on the First and Second Defendants ("**Service Application**");
- (e) the First Defendant's Application by notice dated 6 July 2021 (by paragraphs 1, 2 and 4 thereof) to set aside service of the Claim Form and Statement of Claim ("**D1 Jurisdiction Application**");

Joinder and Consolidation

- (f) the Claimant's Application by notice dated 21 May 2021 seeking among other things (i) the question of joinder of the Claimant to, and consolidation of the Claim with, BVIHCOM 2020/0215 ("**MCL Claim**"); (ii) the lifting of various confidentiality restrictions herein and in the MCL Claim; (iii) permission to search the court file in Claim No. BVIHC(COM)2021/0003; (v) disclosure of documents; and (vi) other miscellaneous procedural orders ("**Procedural Application**")

Representative Order

- (g) the Third Defendant's Application by notice dated 6 July 2021 seeking to set aside the Representative Order ("**Representative Set Aside Application**");
- (h) the incidence of costs of the Representative Party Application;

Security for Costs

- (i) the Third Defendant's Application by notice dated 24/25 June 2021 seeking security for costs against the Claimant ("**Security for Costs Application**"); and

Strike Out Application

(j) the First Defendant's Notice of Application dated 6 July 2021 (by paragraph 5 thereof) to strike out the Claim ("**Strike Out Application**").

AND UPON the Third Defendant's applications for fortification of the cross-undertaking as to damages in the Freezing Order (made by paragraph 4(b) of D3's Application Notice dated 16 July 2021 and paragraph 1(ii) of D3's Application Notice dated 24 June 2021) ("**Fortification Application**") having been ordered by the Court of Appeal to be heard separately from the Application Notices listed above and the Fortification Application being part-heard before Walbank J as at the date hereof

AND UPON the First Defendant not pursuing the Strike Out Application

AND UPON the Court directing that the Third Defendant's Notice of Application dated 21 July 2021 challenging jurisdiction ("**D3 Jurisdiction Application**") should be treated as being before then Court

AND UPON the First Defendant's Notice of Application dated 6 July 2021 (and amended Notice of Application dated 7 July 2021) for appointment of Receiver over Mex Securities ("**Receivership Application**") having been issued but not listed to be heard by the Court

AND IN THE MCL CLAIM, UPON the Court having made the following orders regarding anonymity, sealing of the Court file and confidentiality: (i) the Order of the Honourable Mr Justice Gerhard Wallbank [Ag.] dated 14 December 2020; (ii) paragraph 1 and 4 of the Order dated 9 April 2021; (iii) paragraph 1 and 5 of the Order dated 19 April 2021; (iv) paragraphs 1, 4, 5 and 7 of the Order dated 3 May 2021 ("**MCL Claim Confidentiality Orders**")

AND UPON the Court having made orders in the Claim relating to the sealing of the Court file herein and confidentiality orders on 28 May 2021, 14 June 2021, 21 June 2021 and 29 June 2021 ("**Confidentiality Orders**")

AND UPON various persons having signed confidentiality undertakings pursuant to the MCL Claim Confidentiality Orders and the Confidentiality Orders ("**Confidentiality Undertakings**")

AND UPON the Court's judgment and Order dated 4 October 2021 continuing the Freezing Injunction until trial or further order and dismissing the D3 Discharge Application and D1 Discharge Application and adjourning all other matters before the Court to this further hearing on 12 October 2021

AND UPON the First Defendant's oral application for an adjournment of this hearing pending the determination of the First Defendant's application to the Court of Appeal dated 11 October 2021 in Appeal No. BVIHCMAP2021/0026 ("**D1 Adjournment Application**")

AND UPON the Court indicating that it would initially consider Disclosure 2 on the papers and anticipated delivering judgment on Tuesday 19 October 2021 but that the parties would have liberty to seek a hearing of Disclosure 2 following delivery of that judgment

AND UPON leading counsel for the Third Defendant indicating that the Third Defendant anticipated seeking to amend the D3 Jurisdiction Application and filing supplemental evidence in relation to it

AND UPON the Court hearing submissions on the continuation or discharge of the MCL Claim Confidentiality Orders, the Confidentiality Orders and the Confidentiality Undertakings

AND UPON the Claimant renewing its application contained in paragraph 8 of its Notice of Application dated 21 May 2021 pursuant to CPR 28.16 for inspection and the provide inspection and a copy of the MT4 ledgers and bank statements referred to in paragraph 136 of the Fifth Affidavit of Adam Duthie dated 7 April 2021 filed in the MCL Claim ("**VDHI's CPR 28.16 Application**")

AND UPON the Claimant having sought a payment on account of its costs pursuant to CPR 69B.13 of the costs and leading counsel for the Third Defendant indicating that it objected to an order for costs

AND UPON hearing Tim Penny QC, Alex Hall Taylor QC and Simon Hall for the Claimant, John Carrington QC and Ben Woolgar for the First Defendant and Steven Gee QC, Caley Wright and Shane Donovan for the Third Defendant, and no one appearing on behalf of the Second Defendant

IT IS ORDERED THAT:

Adjournment

1. The D1 Adjournment Application is dismissed.

Disclosure 2

2. The Claimant shall file and serve any submissions and evidence in response to Disclosure 2 by 4pm on Friday 15 October 2021.
3. MBFX shall file and serve any submissions and evidence in reply by 4pm on Monday 18 October 2021.
4. The Court shall determine Disclosure 2 on the papers but the parties shall have liberty to seek a hearing on that application to the extent that they contest the said determination on the papers.

Service and jurisdiction

5. The D1 Jurisdiction Application and D3 Jurisdiction Application and any outstanding issues relating to service including those relating to the Service Application are adjourned to a hearing to be listed on 15 December 2021 with a time estimate of one day.
6. The Third Defendant shall, if so advised, file an amended Notice of Application and any supplemental evidence in respect of the D3 Jurisdiction Application by 4pm on Friday 19 November 2021 .
7. The Claimant shall file any evidence in response to the amended D3 Jurisdiction Application and any supplemental evidence in support of that application by 4pm on Friday 3 December 2021.
8. Liberty to apply as to further evidence in relation to the amended D3 Jurisdiction Application.
9. The First Defendant shall comply with paragraph 9 of the Freezing Injunction by 4.00 p.m. on 19 October 2021, providing (by affidavit) the disclosure sought as at:

9.1. 3 May 2021; and

9.2. 19 October 2021.

Joinder and Consolidation

10. This Claim be consolidated with Claim No. BVIHC (COM) 2020/0215 and Claim No. BVIHC(COM) 2021/0003.
11. That the title of the action be Mex Clearing Ltd (Claimant), Mex Securities Sarl (First Defendant), Multibank FX International Corp (Second Defendant) and Von der Heydt Invest SA (Third Defendant).
12. In all subsequent pleadings and orders the parties shall be described as "Mex Clearing", "Mex Securities", "MBFX" and "VDHI", respectively.

Representative Party Set Aside Application

13. The Representative Set Aside Application is adjourned to the case management conference to be listed pursuant to paragraph 15 below, and the costs of the Representative Party Application are reserved to the same hearing.

Statements of Case

14. The Claimant (for the avoidance of doubt, VDHI) shall file and serve an ancillary claim in the consolidated action by 4.00 p.m. on 26 October 2021, which shall take the place of the statement of claim already served in the claim no BVIHC (COM) 2021/0073, and the deadlines for the filing of defences and replies, if any, shall be stood over to the hearing on 15 December 2021.
15. A case management conference be listed for the first available date after 1 January 2022 with a time estimate of one and a half days with half a day for pre-reading.

Directions in other applications

16. The First Defendant shall have permission to restore the Receivership Application on notice to the other parties for directions.

MCL Confidentiality Orders, Confidentiality Orders and Confidentiality Undertakings

17. Judgment is reserved on the question of the continuation or discharge of the MCL Confidentiality Orders, Confidentiality Orders and Confidentiality Undertakings, and any stay of the discharge of those orders and undertakings pending appeal.

Access to Court file in Claim No. BVIHC(COM) 2021/0003

18. VDH Invest be given access to, and be permitted to search for, inspect and take a copy of any of the documents on the Court file in Claim No. BVIHC(COM) 2021/0003 and any order sealing the Court file of Claim No. BVIHC(COM) 2021/0003 be varied and the seal of the Court file of that claim matter be lifted to the extent necessary to permit such access, searching, inspection and copying.

Disclosure

19. VDHI's CPR 28.16 Application is dismissed.

Costs

20. The costs of Disclosure 2 are reserved to the handing down of judgment on Disclosure 2.
21. The costs of the D1 Jurisdiction Application, D3 Jurisdiction Application, any amendment to the D3 Jurisdiction Application and the Service Application are reserved to the hearing on 15 December 2021.
22. The costs of the Representative Set Aside Application are reserved to the case management conference.

23. The following costs are reserved pending written submissions by the parties on costs:
 - 23.1. the D3 Discharge Application;
 - 23.2. the D1 Discharge Application; and
 - 23.3. the Claimant's costs of the Application by notice dated 29 April 2021,
 - 23.4. the costs reserved by the Court in the Claim by the following orders:
 - 23.4.1. paragraph 12 of the Freezing Injunction;
 - 23.4.2. paragraph 3 of the Order dated 3 May 2021;
 - 23.4.3. paragraph 2 of the Order dated 21 June 2021;
 - 23.4.4. paragraph 13 of the Order dated 29 June 2021;
 - 23.4.5. paragraph 2 of the Order dated 13 July 2021.
 - 23.5. the costs reserved in paragraph 9 of the Order dated 3 May 2021 (made in the MCL Claim).
24. MBFX shall file and serve any written submissions and evidence on the costs reserved pursuant to paragraph 23 above by 4pm on Tuesday 19 October 2021.
25. VDHI shall file and serve any written submissions and evidence in response by 4pm on Tuesday 26 October 2021.
26. Save as otherwise provided herein all other questions of costs in respect of the applications before the Court are reserved.
27. Liberty to apply.

BY ORDER OF THE COURT

REGISTRAR

**IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
VIRGIN ISLANDS
COMMERCIAL DIVISION**

CLAIM NO. BVIHC (COM) 73/2021

BETWEEN:

**VON DER HEYDT INVEST SA
(as a representative party pursuant to the Court's
order dated 21 June 2021)**

Claimant

-and-

**(1) MEX CLEARING LIMITED
(2) MEX SECURITIES S.A.R.L
(3) MULTIBANK FX INTERNATIONAL CORPORATION
Defendants**

ORDER

(Consequential Hearing and applications unrelated to the
Freezing Injunction)

CAREY OLSEN

**Legal Practitioners for the Claimant
Rodus Building, Road Reef Marina, PO Box 3093
Road Town, Tortola, British Virgin Islands**

**IN THE EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF THE VIRGIN ISLANDS
IN THE COURT OF APPEAL**

**INTERLOCUTORY APPEAL UNDER CPR 62.10
BVI CIVIL APPEAL NO. _____ OF 2021**

BETWEEN:

MULTIBANK FX INTERNATIONAL CORPORATION

MBFX/Third Defendant

and

VON DER HEYDT INVEST S.A.

Respondent/Claimant

NOTICE OF APPEAL

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Legal Practitioners for the MBFX