COURT OF THE CAYMAN ISLANDS
VICES DIVISION

Neutral Citation Number: **[2025] CIGC (FSD) 24**

CAUSE NO: FSD 318 OF 2024 (MRHCJ)

IN THE MATTER OF THE COMPANIES ACT (2023 REVISION)

AND IN THE MATTER OF LAKESHORE BIOPHARMA, CO., LTD (FORMERLY KNOWN AS YS BIOPHARMA CO., LTD)

BETWEEN:

YI ZHANG

Plaintiff

-and-

(1) APEX PROSPECT LIMITED
(2) HUI SHAO
(3) BO TAN
(4) AJIT SHETTY
(5) VIREN MEHTA
(6) SHAOJING TONG
(7) RACHEL YU
(8) YUNTAO CUI
(9) JIN WANG
(10) HENRY CHEN
(11) HAITAO ZHAO
(12) PIERSON YUE PAN
(13) CHUNYUAN (BRENDA) WU
(14) CHENN LIGUANG (DAVE)
(15) LAKESHORE BIOPHARMA, CO., LTD (FORMERLY KNOWN AS YS BIOPHARMA CO., LTD)

Defendants

In Chambers

Appearances for the Plaintiff:	Mr. Peter de Verneuil Smith KC instructed by Walkers, and Mr. Brett Basdeo (remotely) and Mr. Nicholas Dunne of Walkers
Appearances for the Company:	Mr. John Wardell KC instructed by Mourant, and Mr. Nicholas Fox and Mr. Charles Henderson of Mourant
In attendance:	Mr. James McWilliams of 3 Verulam Buildings Mr. Graeme Halkerston of Wilberforce Chambers (remotely) Ms. Jolin Lin of Walkers (Hong Kong) (remotely) Mr. Michael Popkin of Mourant (Hong Kong) (remotely)
Before:	Ramsay-Hale CJ
Heard:	21 and 22 January 2025
Judgment:	21 March 2025

Civil procedure - notification injunctions - application for property preservation order pursuant to GCR O 29 r 2(1) - application for modified freezing order and for modified interim injunction - principles to be applied - Holyoake v Candy

DECISION

Introduction

1. This is the decision on the application by the Plaintiff, Mr. Zhang, for injunctive relief against the 15th Defendant, LakeShore Biopharma (the "Company"), made by summons dated 31 October 2024. The application was originally made *ex parte* but the Court gave directions for an *inter partes* hearing as there was no urgency and the Company, although it had notice of the application, was not in a position to deal with it when the matter came on for hearing in December 2024.

Background

2. The background to this application is critical to an understanding of the relief which Mr. Zhang is seeking. Mr. Zhang is the founder of the Company and was the person primarily responsible for building it into a successful NASDAQ-listed global biopharmaceutical company. He has dedicated much of his professional life to the success of the Company. Until the events of which he makes complaint by these proceedings, Mr. Zhang was the Chairman of the Company and the individual responsible for the day-to-day running of the Company. He had a controlling interest in the

Company, holding directly or indirectly shares amounting to 52.75% of its ordinary shares issued and outstanding.

3. Through a series of events beginning in December 2023, Mr. Zhang has been removed both as Chairman and director of the Company, removed from all his positions in the Company's subsidiaries and had his shareholding in the Company diluted to 26.1%.[1] He thus finds himself excluded from the business that he has spent decades of his working life building and of which he had hitherto been *"the driving force."*

4. In these proceedings which were filed on the 14 October 2024, Mr. Zhang alleges that the 2nd to 7th and 14th defendants, as directors of the Company, waged a hostile campaign against him, first removing him as Chairman of the Board, then injuncting him as majority shareholder from calling an EGM at which he proposed to remove them from the Board on a basis which they knew was false in order to stop him removing them as directors and finally causing the Company to issue and allot shares to the First Defendant, Apex Prospect Limited ("Apex") for the improper purpose of diluting his shareholding so they could remain in control of the Company for their own benefit and to his detriment.

5. But for those improper decisions, Mr. Zhang asserts that he would have remained in control of the management of the Company and retained the majority ownership. Instead, the Company is now in the hands of those persons responsible for removing him from his position within the Company to whom he refers, in his supporting submissions, as the Hostile Party and against whom he makes a claim for damages for unlawful means conspiracy.

6. As against the 8th to 13th defendants, Mr. Zhang alleges not only that their appointments were invalid but also that, together with the Hostile Party, they have taken steps as directors that Mr. Zhang contends have significantly altered the Company and its business.

7. He seeks, *inter alia*, declarations that his removal from the management of the Company and its subsidiaries was *ultra vires* and for an improper purpose, that the decision to enter into the share and purchase agreement with Apex was *ultra vires* and for an improper purpose and that the issue and allotment of the Apex shares was in breach of his rights as a member of the Company. The relief he seeks includes orders setting aside the issue of shares to Apex, rectifying the Register of Members, and restraining the Company from allotting any shares which might result in further dilution of his shareholding or negatively affect the asset value and/or the share price of the Company.

This Application

8. In this application, Mr. Zhang seeks an interim notification injunction which has two limbs:

(i) An order preventing the Company from issuing share capital or causing Mr. Zhang's shareholding to be diluted until after he has been given 7 days' notice; and

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(ii) An order preventing the Company or any of its subsidiaries from entering into transactions or dealings with a value in excess of US$50,000 until after Mr. Zhang has been given 7 days' notice unless the transaction is in the ordinary course of business.

9. Although it was not, in terms, part of the relief sought in the summons, in his oral submissions Mr. de Verneuil Smith KC sought an order which would ringfence the company's assets, inviting the Court to make a Property Preservation Order pursuant to GCR Order 29, rule 2(1).

The Evidence

(i) The Issuing of Shares

10. With respect to the first limb of the order sought, Mr. Zhang's position is that, if he is not granted the injunctive relief he seeks with respect to the issuing of new shares, steps will be taken by the Company to further dilute his shareholding so as to keep him in a minority position even if he succeeds in setting aside the Apex share issue.

11. In support of his application under the first limb Mr. Zhang relies on the following matters:

(i) the adoption of a Share Incentive Plan by the Board in May 2024 which he contends is evidence of the Company's intention to issue more shares which will necessarily entail the dilution of his shares;

(ii) the decision to consolidate the Company's shares made at the 27 September 2024 EGM, stating his belief that the most likely explanation for the share consolidation was that the Company intends to issue a substantial further number of shares; and

(iii) the evidence of the Company filed in response to his application, in which the Company states that it may need to seek additional equity financing in the near future to fund its operations.

12. It is his evidence that the relief he seeks will have no practical impact on the Company's ability to raise equity finance, particularly as he has *"no intention of serving the order on the Company's banks."*

(ii) Dealing in Assets

13. With respect to the second limb which is concerned with the Company's dealing in its assets, Mr. Zhang says that, if the relief is not granted, then were his claim to succeed and he was once again the majority shareholder, the Company's business will have been changed by the defendants beyond all recognition, rendering his success nugatory.

14. Mr. Zhang's evidence is that the relief sought is necessary to restrain those in control of the Company from taking steps that might cause irreparable harm to the Company, such that the Company to which he is restored would be different to the one from which he had been excluded. Such harm includes making redundant large teams of personnel who could not be rehired because they will have moved on, losing the institutional memory and expertise such

redundancies would create, and selling or transferring business units which would be impossible to recover or otherwise reconstitute after the fact.

15. In support of this contention, Mr. Zhang points to what he describes as radical changes which have already been made to the Company's operations in the short time since he was excluded, which include[2]:

(i) the change of the Company's name, which he fears is a part of a strategy to dissociate the Company from him as founder so as to facilitate the sale of its core business and/or its subsidiaries;

(ii) the winding down of some of the Company's operations and activities, particularly in the Company's research and development ("R & D") division, the headcount of which has, on the Company's own evidence, been nearly halved and its activities outsourced, which he contends will cause irreparable harm to the Company;

(iii) the significant number of changes in the Company's management marked by a departure of key personnel and a significant number of directors, the sheer number of which he is concerned might have a negative impact on investor confidence and which he considers to be evidence of dysfunction within the Company;

(iv) the reduction in production of the rabies vaccine, which he considers to be commercially incoherent given that all the Company's revenues derive from the sale of the vaccine; and

(v) the restructuring of the Company which has incorporated new subsidiaries, which he suggests is evidence that assets and valuable business are being divested away from the Company.

16. Mr. Zhang's position is that these matters are evidence that the Company is being mismanaged and that, if the relief he seeks is not granted, the Company and its business will be so harmed as to render his success at regaining control of it nugatory.

17. He says the relief he seeks will not fetter the ordinary day-to-day business of the Company as the Company will only need to give him notice of a small class of transactions outside the ordinary course of business and caught by the threshold requirement, with no risk of third parties seeking the Court's sanction before dealing with the Company as Chinese companies "*will not seek to police a Cayman Court order".*

The Applicable Legal Principles

(i) Interim Injunctions

[2] Zhang 4.

18. Mr. de Verneuil Smith in his written submissions characterizes the injunction he seeks as a hybrid injunction with features of a straightforward interim injunction, a proprietary injunction and aspects of a notification injunction. I set out below the principles applicable to each in turn.

19. The jurisdiction to grant injunctive relief is found in section 11 of the **Grand Court Act (2015 Revision)** which confers on the Grand Court the same jurisdiction which is vested in or capable of being exercised in England by the High Court of Justice.

20. It is an equitable remedy which is granted by the discretion of the Court and will be granted if it appears to the court to be just and convenient to do so. Whether the court will exercise its discretion to grant an injunction will depend on a number of factors, including whether there has been any delay and whether the applicant has himself embarked on any misconduct linked to the relief sought which is often referred to in the authorities as "unclean hands".

21. An interim prohibitory injunction may be sought where the applicant believes that the other party, if unrestrained, might cause irreparable or immeasurable damage by continuing the conduct which has led to the dispute. The principles to be applied by the Court on an application for an interim injunction are those that derive from *American Cyanamid v Ethicon* [1975] AC 396. In deciding whether to grant such an injunction, the Court must consider:

(i) whether there is a serious issue to be tried;

(ii) whether damages would be an adequate remedy for the plaintiff if the injunction were not granted;

(iii) if damages would not provide an adequate remedy for the plaintiff, whether the defendant would be adequately compensated under the plaintiff's cross-undertaking in damages;

(iv) if there is doubt as to the adequacy of the respective remedies in damages available to either party or to both, where does the balance of convenience lie;

(v) where other factors are evenly balanced, the course which is calculated to preserve the *status quo* and the course which seems likely to cause the least irremediable prejudice to one party or to the other: see Mangatal J in *Re Xie Zhikun & Others v XiO GP Limited* [2019 (1) CILR N.6] at [35].

22. In considering the question of whether there is a serious issue to be tried, the Court in *American Cyanamid* made it plain that it is no part of the court's function to try to resolve conflicts of evidence: ibid at 407.

23. In *Holyoake v Candy* [2016] EWHC 970 (Ch), Nugee J at first instance held that there was jurisdiction to grant a notification interim injunction of the kind sought by Mr. Zhang. He summarised the principles applicable to injunctions in [8] of the judgment and said this at sub-

paragraphs (3) and (4) which were not disapproved in the subsequent appeal to which I refer later in this judgment:

> *"(3)* ***Leaving aside the special case of a freezing injunction*** ***therefore, a claimant who seeks an injunction restraining a defendant from dealing with an asset will normally have to assert that such a dealing will be an invasion of some right of his, or a breach of some obligation owed to him.*** *This may be for example because he asserts some proprietary right to the asset (for example a tracing claim) or because the defendant has contracted not to dispose of it, or, to take another example, because the defendant is under an obligation to dispose of it at a proper price and is threatening to dispose of it at what is asserted to be an undervalue. In all such cases there is ample jurisdiction conferred by s 37 to restrain the threatened disposal.*
>
> *(4) In such a case there is no reason why the court cannot****, instead of granting an injunction restraining the disposal altogether, grant a notification injunction, that is an injunction restraining the defendant from disposing of the asset without having given the claimant prior notice****... If the court can do the latter, it can plainly do the former; indeed, I have personal experience of such injunctions being sought and granted and I strongly suspect that they are routinely asked for and granted without the jurisdiction to do so ever being queried."*
>
> *[Emphasis added]*

24. To summarise then, the Court has jurisdiction to grant an interim notification injunction on the principles set out in *American Cyanamid* where there is, to borrow a phrase from the learned Judge, *"a threatened invasion of some right of the claimant or breach of the claimant's rights,"* but a complete ban on dealing with assets is not required in all the circumstances of the case.

25. In his oral submissions, Mr de Verneuil- Smith characterized the injunction to restrain the issues of shares as *quia timet* injunction aimed at preventing the further improper dilution of Mr. Zhang's shareholding by the Company.

26. It is not necessary for the applicant to show that the event which it is directed at preventing *will* occur. As explained in *Gee on Commercial Injunctions* 7th ed., at 2-045, the jurisdiction requires proof only that, unless the court intervenes, there is a *real risk* that an actionable wrong will be committed. Proof will usually be by evidence that the defendant has threatened to do the particular wrongful act. Merely saying *"he fears"* - quia timet - that it will be done is not enough. The applicant must aver and prove that what is going on is calculated to infringe his rights: see Lord Dunedin in *A-G for the Dominion of Canada v Ritchie Contracting and Supply Co Ltd* [1919] AC 999 at 1005.

27. In *Coflexip SA v Stolt Comex Seaway MS Ltd* [1999]2 All ER 593, the Court cited, with respect to *quia timet* relief, the decision of Harman LJ stated *K S Paul (Printing Machinery) Ltd v Southern Instruments (Communications) Ltd* [1964] RPC 118 who said this at 122–123:

> *"You cannot get an injunction against a man unless you can say he is threatening and intending to do this and unless restrained by injunction will do it … It is exactly as if Mr. Aldous in a sworn affidavit had said: "I am fearful that unless restrained by the Court Sir Lionel Heald will hit me on the head with a volume of the Patent Reports". He then goes on and says: 'If he is not going to do it, it will not hurt him, so you may as well grant an injunction'. I have heard that argument before*."

28. The authorities are clear that the fact that a defendant has infringed a right does not mean that a future threat exists.

(ii) Proprietary Injunctions

29. The scope of the Court's power to make property preservation orders pursuant to GCR O.29, r.2(1) is usefully summarized in the *White Book*:

(i) the source of the Court's power is the inherent jurisdiction of the Court to secure by orders the just and proper trial of the issues: see *White Book* note 29/8A/2;

(ii) the Court may only make an order in relation to property "*which is the subject-matter of the cause or matter or as to which any question may arise therein."* The property must be *bona fide* the subject-matter of the action: see note 29/8A/7;

(iii) the order may be granted even where the party against whom it is sought has a proprietary interest in it. An order should not be refused merely because the defendant claims that he has a discretionary power to determine whether or not the property should be preserved and how it should be preserved, when one of the issues in the case is whether or not the power is untrammelled by a duty to the plaintiff to preserve the property: *Johnson v Tobacco Leaf Marketing Board* [1967] VR 427.

30. In *Johnson's* case the Court held that when an application is based upon the provisions of the rule, an inquiry into the merits is not required.

31. In making an order of this kind, the principles of *American Cyanamid* apply: see *Polly Peck International plc v Nadir and others (No 2)* [1992] 4 All ER 769.

(iii) Freezing Injunctions

32. An applicant may apply for a freezing injunction where he seeks to protect assets that he fears will be dissipated before judgment can be obtained. The test for granting a freezing injunction is whether, after the plaintiff has shown that he has at least a good arguable case and after considering the whole of the evidence before the court, the refusal of an injunction would involve a real risk that a judgment in the plaintiff's favour would remain unsatisfied because of the defendant's removal of assets from the jurisdiction or dissipation of assets within the jurisdiction: see *Ninemia Maritime Corp v Trave Schiffahrtsgesellschaft mbH & Co KG; The Niedersachsen* [1984] 1 All ER 398, followed by Smellie CJ, as he then was, in *Classroom Investments Incorporated v China Hospitals Incorporated and another* [2015] 1 CILR 451.

33. The notification injunction which is sought in this application does not involve a complete ban on all dealings in assets, but that advance notice of proposed dealings be given to the applicant.

34. In *Holyoake and another v Candy* (supra) Nugee J at first instance held at [8(8)] that if a claimant satisfies the Court that there is a risk of dissipation such as would justify a freezing injunction, the court can grant a notification injunction, on the basis that,

> *"The purpose of doing so is the same, to restrain a threatened dissipation of assets in breach of the defendant's obligation not to dissipate assets for the purpose of, or with the effect of, leaving a judgment unsatisfied. To that extent there seems to me clearly power under s 37 to grant a notification injunction even if a full-blown freezing injunction is not asked for."*

35. On appeal[3], the Court of Appeal confirmed the Court's jurisdiction to grant a notification injunction but disapproved of Nugee J's finding at [47] that the proposed notification injunction was less intrusive than a freezing order and that this was relevant to the degree of risk which needs to be shown by the applicant.

36. In her judgment on behalf of the Court, Gloster LJ made it plain that a notification injunction, although a modified version of a conventional freezing injunction, nonetheless involves a draconian interference with a defendant's business and would constitute a fetter on the Company's day to day business, contrary to the suggestion made by Mr. Zhang that such an order would have no practical impact on the Company's day-to-day business or its ability to raise financing.

37. The following extract from the decision Gloster LJ at [36] dealing with the nature of notification injunctions is instructive:

> *"(i) The function, operation and machinery of a notification injunction in the wide terms of the orders dated 8 and 29 April are essentially equivalent to those of a conventional freezing order. Both are concerned with protecting the applicant against a risk that the other party will dissipate their assets so as to defeat enforcement of a possible future judgment.* ***Both operate by prohibiting the affected party from dealing with or disposing of all their assets, subject to certain exceptions. In both cases this prohibition is supported by the threat of contempt proceedings for breach of the order, including against third parties who knowingly assist the affected party in breaching the order.***
>
> *(ii) Both forms of injunction involve a draconian interference with the right of businessmen or corporate entities to deal with their personal or business assets.* ***Both also carry a reputational stigma.***
>
> *(iii)* ***One particular similarity is that, vis-à-vis third parties who wish to deal with the affected party,*** *a notification injunction is in practice indistinguishable from a conventional freezing order. In both instances the only prudent course for a third party on notice is* ***to require evidence that the proposed transaction complies with an exception***

[3] *Holyoake v Candy* [2017] EWCA Civ 92.

> ***to the prohibition; for example that it is indeed within the "ordinary and proper course of business."***
>
> *(iv) The only significant difference between a notification injunction and a conventional freezing order is the scope of the exceptions to the prohibition. This is itself apparent from the terms of the 8 April notification injunction and the 29 April notification injunction, which followed the pro forma scheme of the conventional freezing order contained in the annex - but with a general exception in relation to notified transactions.*
>
> *(v) The judge's conclusion that the court had jurisdiction to grant a notification injunction was based on the jurisdiction to grant a conventional freezing order necessarily subsuming a lesser form of the same relief."*

38. The learned Judge emphatically rejected the proposition that lesser evidence was required in order to obtain what counsel for the applicant urged was a lesser relief and the proposition that, since a notification injunction was less onerous than a conventional freezing order, less stringent evidence was required.

39. Gloster J confirmed that the test for the grant of a notification freezing order of the kind sought by Mr. Zhang in respect to the disposal of assets, is the same as for applications for a conventional freezing injunction. The applicant must show:

(i) a good arguable case, which is the same as the *"serious issue to be tried"* test for interim injunctions generally, as clarified by the UK Court of Appeal in *Isabel dos Santos v Unitel S.A.* [2024] EWCA Civ 1109;

(ii) There must be a real risk, judged objectively, that a future judgment would not be met because of unjustifiable dissipation of assets; and

(iii) It is just and convenient to grant the injunction.

40. On the question of risk, the Court in *Holyoake* relevantly observed that where a defendant knows that he faces legal proceedings for a substantial period of time prior to the grant of the order, and does not take steps to dissipate his assets, that can be a powerful factor militating against any conclusion of a real risk of dissipation.

41. The key principles applicable to the question of risk were summarised by the Court of Appeal in *Lakatamia Shipping Co Ltd v Morimoto* [2019] EWCA Civ 2203. Relevant to the issue before me, the Court stated at [34] that,

> *"The risk of dissipation must be established by solid evidence; mere inference or generalised assertion is not sufficient."*

and at [51],

> *"(1) Where the court accepts that there is a good arguable case that a respondent engaged in wrongdoing against the applicant relevant to the issue of dissipation, that holding will point powerfully in favour of a risk of dissipation.*
>
> *(2) In such circumstances, it may not be necessary to adduce any significant further evidence in support of a real risk of dissipation; but each case will depend upon its own particular facts and evidence."*

42. The Court held at [61] that the wrongdoing in *Lakatamia* was wrongdoing which went to the very heart of the question of risk of dissipation in that,

> "*….both Lakatamia's claims or causes of action against Madam Su bore directly on the question of dissipation itself: both the unlawful means conspiracy and Marex causes of action themselves concerned her assisting in the act of dissipation, albeit of her son's funds, but dissipation nevertheless."*

43. They contrasted this with the unusual facts in *Holyoake,* observing at [59]:

> *"Counsel for the claimants, Mr Trace, submitted that the claimant's allegations amounted to "allegations that the [defendants] would do everything they could to make life difficult for Mr Holyoake" (paragraph [39]).* ***Counsel for the Defendants, Mr McQuater, submitted that the threats amounted to a threat that the claimant would get nothing back from their investment in the property, but "they are not threats by the defendants to do anything with their own assets, still less a threat to dissipate those assets to avoid a claim by the claimants".*** *He submitted that the matters alleged against the defendants did not give rise to a real risk of dissipation (paragraph [40]).* ***Nugee J accepted that "the thrust of the claimant's complaints in this action are not of having been defrauded but of having been coerced by duress and illegitimate threats" (at paragraph [41]); but went on to hold that there was, nevertheless, a risk of dissipation (at paragraphs 42]–[43])****.*
>
> and concluded that*,*
>
> *"…it was understandable why having determined that Nugee J applied the wrong test in law and the decision should be remade, the Court of Appeal then declined to draw an inference and came to a different conclusion on the question of the risk of dissipation from the Judge below."*
>
> *(Emphasis added)*

44. The Grand Court's jurisdiction to grant notification injunctions was confirmed by Kawaley J in *ArcelorMittal v Essar* (Unreported, 2 July 2019) citing the decision of Gloster LJ in *Holyoake.*

Analysis:

(i) Notification Injunction to restrain the issue of shares

45. The first question for resolution is whether there is a serious issue to be tried. Mr. Zhang's pleaded claim set out in the Statement of Claim as follows:

> *"In causing the Company to enter into the Apex SPA and to issue and allot the Apex Shares, the aforesaid members of the Board other than Mr Zhang acted for the purpose, or substantially for the purpose, of diluting Mr Zhang's shareholding in the Company so as to be able to (1) remove the Company from Mr Zhang's control and place it under the control of the Hostile Party; and (2) prevent their own removal as directors of the Company by Mr Zhang (the "Improper Purpose")."*

46. The evidence relied on to support the allegation that the directors acted with an improper purpose is the fact that the Hostile Party obtained an injunction against Mr. Zhang on a false basis and in breach of their duty of full and frank disclosure and that, immediately after the injunction was set aside, the Company entered into the Apex share purchase agreement, the effect of which was to substantially dilute Mr. Zhang's shareholding such that he no longer had the votes to remove the Hostile Party from the Board.

47. Mr. Zhang contends that the demand by the Company's creditor that was used to justify the Apex share issue was instigated by the Hostile Party but, in any event, the demand could have been met by debt financing and from the Company's cash reserves. He says further equity financing was highly disadvantageous to the Company's members in the circumstances where the shares were undervalued, with market cap of USD 35 million, despite an asset value of USD 78 million. Given that debt financing was a viable alternative to equity financing, the inference to be drawn was that the decision to pursue equity financing was driven by the desire of the Hostile Party to achieve the Improper Purpose and not by any honest belief that it was in the best interests of the Company.

48. Notwithstanding that the allegations are denied by the Company, which says that the demand was *bona fide* and put the Company was in urgent need of cash for which there was no other source of funding other than equity financing, the claim raises a question of fact which must be determined at trial. I therefore conclude that there is a serious issue to be tried.

49. The second question for resolution is whether there is a real risk that, unless restrained by injunction, the Company will issue shares for the improper purpose of diluting Mr. Zhang's shares.

50. Mr. de Verneuil Smith submits that there is a "*strong risk"* that steps will be taken to further dilute Mr. Zhang's shareholding in a manner that he cannot easily challenge or unwind. The risk is to be inferred from what he described as the *"history"* of dilution for an improper purpose and the Company's *"admission"* that it intends to raise capital through a further issue of shares.

51. With respect to the harm to Mr. Zhang if the relief is not granted, Mr. de Verneuil Smith says that if the Company were able to proceed with equity raising on terms which were improper and/or uncommercial and present Mr. Zhang with a *fait accompli,* Mr. Zhang would only be able to seek relief in respect of such further dilution after the fact, either in these proceedings or by

commencing entirely fresh proceedings, leading potentially to years of litigation, the probable exhaustion of Mr. Zhang's resources and the possible result that, even if he succeeded in his present claim, he would not be restored to a position of majority ownership of the Company. Were the court to grant the order, Mr. Zhang would have the ability to consider whether the proposed share issue was *bona fide* for some proper purpose of the Company. If it were, he would raise no objection.

52. By contrast, given the limited nature of the injunction, it was very difficult to see a plausible scenario in which the Company would suffer any loss or damage and the Company has not said otherwise in its evidence.

53. If I may say, the submission that there is a history i.e. a pattern, of improper dilution of Mr. Zhang's shareholding, is overblown. There is no history. It is certainly not the case that because there is an arguable case that the allotment of the Apex shares was for an improper purpose, that that is evidence that any future issue of shares to raise funds would be for an improper purpose.

54. Something more is required in the circumstances where the Company has not sought to issue shares in order to further dilute his position, even though it has been aware of his challenge to the Apex share issue since February 2024. This follows from the "stable door" point made by Gloster J in *Holyoake* at [62], albeit in the context of a risk of dissipation of assets but relevant nonetheless, that if there were a real risk of that the Company would continue to dilute his shareholdings, it would have materialized by the time of the application.

55. So what is the evidence on which Mr. Zhang relies? The first is the decision to consolidate the Company's shares for which he says the most likely explanation is that the Company intends to issue a substantial further number of shares. The Company's evidence, that the consolidation was necessary to avoid de-listing and that the NASDAQ listing requirement had been explained in the Company 2024 Annual Report, puts paid Mr. Zhang's claim.

56. The second matter on which he relies is the Share Incentive Plan which was approved in May 2024. The Company's evidence is that it was approved at a meeting which Mr. Zhang attended and that it replaced an earlier incentive plan which was put in place in 2020 when Mr. Zhang was chairman. The fact that Mr. Zhang approved a Share Incentive Plan in 2020 supports the Company's evidence that they are a normal aspect of corporate employee incentivization.

57. With respect to the third matter, which is the postulated *"admission"* made by the Company, that it will be seeking additional equity, the Company's evidence is that it has, throughout its lifecycle, obtained funding through equity financing, that it needs cash presently to fund its operation - not the least because Mr. Zhang has obtained divers freezing orders against the Company in the PRC which have tied up substantial cash and capital assets - and may need raise funds through equity financing in the near future. As Mr. Wardell points out, there is nothing improper about diluting shareholdings for the purpose of funding the Company's operations. This was made clear by the Privy Council in *Tianrui (International) Holding Company Ltd v China*

Shanshui Cement Group Ltd (Cayman Islands) [2024] UKPC 36 which is the authority that provides the legal basis for Mr. Zhang's claim. The Board held that the rights of a shareholder do not extend to preventing the dilution of his shareholding, save where there is an improper purpose. I set out the relevant parts of the judgment in full:

> *"71. It is not, of course, any part of the corporate contract that, if this is to happen, it is done only by a proper exercise of the power, i.e. one that is exercised bona fide for the benefit of the company as a whole and exercised for the purposes for which the power was conferred. This will necessarily exclude, for example, an allotment and issue of shares which is deliberately aimed at altering the balance of power between shareholders, so as to advance the power of one (or one group) at the expense of another.*
>
> *"72. This is, in the Board's view, the basis of the shareholder's right to bring an action against the company to challenge an improper exercise of the directors' power to allot and issue shares. It is implicit in the contract constituted by the articles of association that the company's power to allot and issue new shares, delegated by the articles to the directors, will be exercised properly, which is to say by the directors on behalf of the company in accordance with their fiduciary duties. The harmful consequence to the shareholder is the alteration (adverse to him) in the balance of power between the company's shareholders and the particular harm which that does to the value of the rights embedded in his shares. It is an actionable harm because the impropriety in the exercise of the power contravenes the corporate contract binding him and the company, even though the relevant fiduciary duty breached by the directors is not owed to him."*

58. It is not enough to say that there will be a further issue of shares to finance the Company's operations or that shares may be awarded through the Share Incentive Plan. What is required is proof that the shares will be issued for an improper purpose and none has been furnished to the Court. That Mr. Zhang's shareholding may be diluted as a necessary incident of equity financing is not the threat of actionable wrong justifying the grant of the relief sought.

(ii) Application for the Preservation of Property pursuant to GCR Order 29

59. Mr. de Verneuil Smith accepted, in his oral submissions, that there needs to be property in dispute. The first issue for resolution, then, is whether Mr. Zhang has any property rights in the assets of the Company which the Company has a duty to preserve.

60. It is Mr. Zhang's case, as advanced by Mr. de Verneuil Smith in his oral submissions, that the remedy Mr. Zhang seeks, which is to have the allotment of the shares to Apex set aside and Apex's title to the shares extinguished by a rectification of the Register, is a proprietary remedy.

61. I cannot accept that proposition. Mr. Zhang's claim is not, as Mr. Wardell rightly submitted, a proprietary claim. A proprietary claim is one where the claimant asserts a legal or beneficial interest in an asset. That asset must be specific and ascertained: see Gee *Commercial Injunctions* (7th Ed.) at 2-026.

62. In the illustrative decision in *Polly Peck* an order was granted preserving a specific sum of money on the basis that it would be possible for the plaintiff to trace it in the hands of the defendant as being in equity the property of the plaintiff. Scott LJ observed at 776 (e-f) that if identifiable assets are being claimed, the relief sought will be for the purpose of preserving the assets in question until their true ownership can be determined.

63. The nature of a proprietary claim was also considered in *Classroom* by Smellie CJ, as he then was, citing the judgment of Staughton LJ in *Haiti (Republic) v Duvalier* [1990] 1 QB 202 at 213-214:

> *"A proprietary claim is one by which a plaintiff seeks the return of chattels or land which are his property or claims that specified debts owed by a third part to him and not the defendant…A plaintiff who seeks to enforce a claim of that kind will be more readily afforded interim remedies in order to preserve the asset which he is seeking to recover, than one who merely seeks a judgment for debt or damage."*

64. If Mr. Zhang succeeds in showing that the decision to enter into the Apex share purchase agreement and issue the Apex shares was taken for an improper purpose, the decision may be set aside and the Company's register rectified. The rectification of the register would restore his majority shareholding. That shareholding does not give him any proprietary interest in the Company's assets that would support the grant of a property preservation order over its assets. The legal position was recently affirmed by two Supreme Court authorities to which I was referred by Mr. Wardell. In *Marex Financial Ltd. v Sevilleja (All Parliamentary Group on Fair Business Banking intervening)* [2020] UKSC 31, Lord Reed said at [31]:

> "*A share is not a proportionate part of a company's assets: Short v Treasury Comrs. Nor does it confer on the shareholder any legal or equitable interest in the company's assets: Macaura v Northern Assurance Co Ltd. As the court stated in Prudential, a share is a right of participation in the company on the terms of the articles of association. The articles normally confer on a shareholder a number of rights, including a right to vote on resolutions at general meetings, a right to participate in the distributions which the company makes out of its profits, and a right to share in its surplus assets in the event of its winding up*."

65. In *BTI 2004 LLC v Sequana SA and others* [2022] UKSC 25, Lord Reed said this at [44] in a discussion on the treatment of creditors when a company approaches insolvency:

> *"44. The way in which that feeling has been expressed in the cases has involved a loose or perhaps metaphorical use of legal terminology, for example by describing creditors as "beneficially interested in the company or contingently so" (Permakraft at p 249), or by speaking of the company's assets becoming the creditors' assets "in a practical sense" (Kinsela at p 730), or by describing the situation where a company is insolvent or approaching insolvency as one where "it is the creditors' money which is at risk" (Kinsela*

> *at p 733). That language suggests an analysis based upon the transfer of a proprietary or "quasi-proprietary" interest in the assets of the company from its shareholders to its creditors as the company approaches or enters insolvency. Whatever the position may be under the law of Australia or New Zealand (cf Page 17 Commissioner of Taxation v Linter Textiles Australia Ltd [2005] HCA 20; (2005) 220 CLR 592), there is no transfer of a proprietary interest under English law. A company's shareholders have no proprietary interest in its assets: Macaura v Northern Assurance Co Ltd [1925] AC 619; Short v Treasury Comrs [1948] 1 KB 116, affirmed [1948] AC 534; Marex Financial Ltd v Sevilleja [2020] UKSC 31; [2021] AC 39, paras 31 and 105…"*

66. Shareholder rights relate solely to corporate participation, not to the assets of the company.

67. Mr. de Verneuil Smith made the point at the very outset that the claim has been brought on the basis that Mr. Zhang has a *personal* claim against the Company for the improper dilution of his shares in breach of *"the corporate contract binding him and the company"* as explained by the Privy Council in *Tianrui.*

68. The subject-matter of this action is a breach of that contract, not property. The claim is for an allotment of shares to be set aside as having been made for an improper purpose and for the Register to be rectified. While rectification of the Register may restore Mr. Zhang to majority control, that would not confer a proprietary or quasi-proprietary claim on Company assets themselves, thus precluding property preservation orders under GCR O.29, r.2(1).

69. As the assets of the Company are not the subject-matter of the dispute, I refuse Mr. Zhang's application for an interim preservation order requiring the Company to give him notice of any proposed dealing in them.

(iii) Modified Freezing Injunction

Risk of Dissipation of Assets

70. I have already accepted that there is a serious issue to be tried and so move to a consideration of whether or not Mr. Zhang has shown that there is a real risk of an unjustified dissipation of assets.

71. The case for Mr. Zhang is put this way: for the reasons that Mr. Zhang has explained, there are good reasons to believe that, absent the intervention of the Court, there is a real risk that steps may be taken to substantially change the nature of the Company as to render any ultimate judgment in his favour nugatory. The order sought is justified as it provides a means to preserve the value of the shares which Mr. Zhang holds and to prevent unjustified and unusual transactions, i.e. those falling outside the ordinary course of business, which carry the risk of causing irreparable harm to the Company and to Mr. Zhang's interest therein. It is sought ancillary to the order protecting his shareholding, as otherwise, what would be the value of that shareholding if the underlying business were swept away. There has been delay in bringing the proceedings, but urgent relief is required now that Mr. Zhang has issued his claim and the Company faces the real possibility that he will return to majority ownership as there is a real risk

that those in charge of the Company will take steps to significantly change or dispose of the Company's business and operations in a manner that cannot subsequently be undone, to prevent him from resuming practical ownership and control of the Company and its subsidiaries. As the injunction is sought principally to preserve the Company's existing business and operations, the balance of convenience and considerations of justice and convenience overwhelmingly favour the grant of the relief.

72. I begin with the observation made by Mr. Wardell, with which I agree, that no case has been cited to support the argument that a risk of substantially changing the nature of the Company is a basis on which to obtain what is a modified freezing injunction, which is only available to protect a party from the risk of dissipation.

73. That is enough, in my view, to dispose of this aspect of the application.

74. Notwithstanding that view, I turn to a closer consideration of Mr. Zhang's evidence in which he sought to raise the spectre of the Company seeking to dissipate its assets or take steps to change the business of the Company to prevent him from regaining practical control.

75. The first is the allegation that the Company changed its name and established subsidiaries into which assets of the Company were transferred the better to dispose of them. The evidence on which he invited the Court to draw the inference that the Company might sell some or all of its significant assets was evidence of a May 2023 *"attempt"* (when he was Chairman) by three of the defendants - Mr. Chenn, Mr. Tan and Ms Yu - to hive off the assets and business of the subsidiary which produces the rabies vaccine, and further discussions with Mr. Chenn, between June and August of the same year, in which the sale of a stake in the subsidiary to the government or its outright sale to be followed by an internal restructuring, were raised. This, even though Mr. Zhang states that the issue was never raised again.[4]

76. If I have understood the evidence correctly, the vaccine is the sole source of revenue for the Company. Selling off its only source of income would not only be a commercially unsound proposition, but it would also be catastrophic. The improbable proposition that the Company would do so flies in the face of Mr. de Verneuil Smith's statement that Mr. Zhang does not suggest that those in control of the Company would seek to deliberately harm the Company, and by extension the interests of its shareholders.

77. That statement must be fatal to the application, as absent an allegation that those in control of the Company are intent on some deliberate dealing with the Company's assets which would harm the Company - that is to say, some dealing which is unjustified - there is no basis for the grant of an injunction to restrain them.

78. There is nothing inherently sinister about establishing subsidiaries or restructuring a business or renaming companies, in any event. Such activity does not objectively demonstrate a risk of

[4] Zhang 1 para116 (b)(i) and (ii).

dissipation, much less an *unjustified* risk. As the Court of Appeal emphasised in *Lakatamia*, mere inference or generalised assertion is not good enough.

79. The other matters relied on - the downsizing of the R & D department, the reduction in the production of the rabies vaccine and changes to Company personnel as set out in para 14 *supra*. - cannot support the relief claimed. Though significant operational restructuring and reduction in personnel may alter the corporate structure, without solid evidence of intent or threat of unjustifiable dissipation or concealment of assets, no genuine risk emerges that would support a freezing injunction or its modified equivalent.

80. All that said, the application is not in reality aimed at restraining the dissipation of assets so that Mr. Zhang might enforce a judgment against them. What is sought is the issue of an injunction, ancillary to Mr. Zhang's claim to be restored to his position as a majority shareholder, to restrain the Company's ability to deal in its assets in order *"to preserve **the value of the shares which Mr. Zhang holds** and to prevent unjustified and unusual transactions, i.e. those falling outside the ordinary course of business to ensure that **the value of the Company is preserved** pending the resolution of the dispute as to that ownership*."[5]

81. It has been advanced on the basis that there is a real risk that there will be harm done to the Company, resulting in substantial irreversible in its business and operations, if the relief is not granted, such as making redundant large teams of personnel who could not be rehired because they will have moved on, losing the institutional memory and expertise such redundancies would create and selling or transferring business units which would be impossible to recover or otherwise reconstitute after the fact.

82. Of course, it is axiomatic that if assets are sold or the R&D department shut down, that the company Mr. Zhang regains control of, if he wins, will be a different company to that extent. But as Mr. Wardell rightly submits, change in the business or operations of a Company - or its name - does not necessarily equate to loss of value.

83. Lord Reed's observations in *Marex* are helpful in this regard:

> *"32. … companies vary greatly, and the value of their shares can fluctuate upwards or downwards in response to a wide variety of factors. In the case of a small private company, there is likely to be a close correlation between losses suffered by the company and the value of its shares. **In the case of a large public company whose shares are traded on a stock market, on the other hand, a loss may have little or no impact on its share value. If there is an impact on share value, it will reflect what Lord Millett described in Johnson [2002] 2 AC 1, 62 as "market sentiment",** and will not necessarily be equivalent to the company's loss. If the company's loss does not affect the value of its shares, then there is no claim (or at least no sustainable claim) available…"*
>
> *[Emphasis added]*

[5] Plaintiff's Skeleton at [107].

84. Even if it were that the Company would suffer an actionable loss if an injunction were not granted to restrain the sale or disposal of its assets, it could not be granted in support of a personal claim by Mr. Zhang, but only in support of a claim by the Company.

85. As Lord Reed stated in *Marex* at para 39:

> *"**a diminution in the value of a shareholding** or in distributions to shareholders, which is merely the result of a loss suffered by the company in consequence of a wrong done to it by the defendant, **is not in the eyes of the law damage which is separate and distinct from the damage suffered by the company and is therefore not recoverable**. Where there is no recoverable loss, it follows that the shareholder cannot bring a claim, whether or not the company's cause of action is pursued."*
>
> *[Emphasis added]*

86. The subject-matter of the claim is Mr. Zhang's shareholding which gives him a right of participation in the Company. His shareholding does not confer on him any right of action to restrain wrongdoing by those in control of the Company - which is not alleged - or to the grant of interim relief in support of it.

87. I have not rehearsed much of the Company's evidence in my decision, not because I have not considered it, but because, as Neuberger J said in *Flightwise Travel Service Ltd v Gill* [2003] EWHC 3082 (Ch), with whom Gloster J agreed in *Holyoake*,

> "*32. … it is for the applicant to make out his case to support a freezing order, namely an appropriately strong case against the respondent concerned, and that there is a real risk of dissipation by the respondent. It is not for the respondent to show that a freezing order ought not [to] be granted.*"

Conclusion

88. For the reasons set out above, I dismiss the application for injunctive relief. I will hear the parties on costs.

DATED THE 21ST MARCH 2025

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THE HON. JUSTICE MARGARET RAMSAY-HALE
CHIEF JUSTICE OF THE GRAND COURT