Neutral Citation Number: **[2025] EWHC 3068 (Comm)**

Case No: **CL-2025-000090**

IN THE HIGH COURT OF JUSTICE
BUSINESS & PROPERTY COURTS OF ENGLAND & WALES
KING'S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: **14/11/2025**

Before:

Mr Justice Andrew Baker

- -

Between:

BEIJING SONGXIANGHU ARCHITECTURAL DECORATION ENGINEERING CO. LTD	**Claimant**
- and -	
KITTY KAM (also known* as WANG YUZHI)	**Defendant**

* according to the Claimant

- -
- -

Mr A Ayoo (instructed by **Reed Smith LLP**) for the **Claimant**.
Mr P Chaisty KC (instructed by **The Solicitors Advocates and Barristers Inc Ltd**) for the **Defendant**.

Hearing date: 14 November 2025

- -

JUDGMENT
(Approved Transcript)

- -

Friday, 14 November 2025

Mr Justice Andrew Baker

1. This Part 8 Claim is a claim for relief by way of freezing order in connection with a judgment obtained by the claimant against the defendant in the Hong Kong Court of First Instance. That judgment, for the principal sum of c.HK$220m, was entered on 25 October 2024. I was informed by Mr Ayoo during the argument of today's application this morning that an appeal against that judgment in Hong Kong, to which reference has been made in the papers in this court, was heard and dismissed last week.

2. There is also, in this court, a Part 7 Claim, suing on the Hong Kong judgment itself, for recognition and enforcement of that judgment in this jurisdiction at common law (CL-2025-000087). Robin Knowles J, under the Part 8 Claim, granted a freezing order on 12 March 2025 at a hearing without notice. It was continued by Butcher J after an argument *inter partes*, at which grounds were advanced objecting to the grant of the freezing order and maintaining that it should be discharged, at a hearing on 28 March 2025, resulting in an order of that judge dated 4 April 2025.

3. The freezing order as granted by Robin Knowles J required asset disclosure in typical terms, well recognised in the law as critical ancillary elements of most freezing orders if they are to have good prospects of achieving their intended results and being capable of being policed. The order for asset disclosure required initial information to be provided within 5 days of service of the injunction, to be confirmed by affidavit within 10 days of such service.

4. The defendant did not comply with either part of the order for asset disclosure. By the order of Butcher J continuing the freezing order *inter partes* and refusing the

defendant's discharge application, some minor amendments were made to the terms of the freezing order and, so far as is directly relevant for today's purposes, the time by which, and manner in which, the defendant was to provide asset disclosure was varied. Thus, by para.7(a) of that order, an application by the defendant for an extension of the time limit for the requirement on her part to provide asset disclosure was granted to this extent, namely she was ordered to provide the information as originally required by the *ex-parte* freezing order, at para.11 of that order, but now in one hit by way of affidavit by 4 pm on 8 April 2025.

5. The material and significant aspect of the case that gave rise to the application to discharge the injunction – and the resistance to its continuation *inter partes* – was an objection by the defendant that the bringing of the Part 8 Claim for freezing order relief in support of, ultimately, the claimant's enforcement actions in respect of the judgment, infringed an undertaking given by the claimant to the Court in Hong Kong.

6. That arose, briefly, in the following way. There was, in the Hong Kong Court, a pre-judgment freezing order, in connection with the grant of which, in January 2023, the claimant had undertaken, amongst other things, not without the leave of the Hong Kong Court to begin proceedings against the defendant in any other jurisdiction. After judgment was obtained in Hong Kong on 25 October 2024, at a further hearing in mid-December 2024, the Hong Kong Court ordered, amongst other things, that, for the avoidance of doubt, the plaintiff be released from the undertaking to which I have just referred and that:

> "[The plaintiff] be at liberty to enforce the judgment entered herein on 25 October 2024, if it so desires, anywhere outside the jurisdiction."

7. The existence of that undertaking, that release from the undertaking, and the possibility that there might be an argument over whether the scope of the release was wide enough for the Part 8 Claim now brought here to be outside the scope of the thus-amended original undertaking in Hong Kong, was all drawn to the attention of this court without notice when the injunction was obtained from Robin Knowles J. That included disclosure to the court of advice obtained from a suitably qualified barrister in Hong Kong as to, in her opinion, the likely attitude of the Hong Kong Court to whether the release from the undertaking, as opposed to what was therefore left of the undertaking, would cover the freezing order application made here.

8. I am minded to agree with Mr Chaisty KC's submission that that evidence was not in the nature of expert evidence of Hong Kong law, except perhaps to whatever extent it indicated aspects of the approach to the interpretation of undertakings given to the court that is adopted under Hong Kong law. That, however, is not quite the point or the material importance of that evidence. Rather, that evidence was provided as part of demonstrating to this court, with cards fully on the table, the circumstances that ought fully and frankly to be disclosed in seeking a freezing order here, and the reasons why, notwithstanding the existence to the extent that it still continues of the undertaking given to the Hong Kong Court, the claimant proposed that it was appropriate to apply for such relief here.

9. Butcher J concluded that, firstly, it was not necessary for the purposes of deciding whether to continue the freezing order, and by parity of reasoning whether to accede to

the application to discharge it, to decide whether the remaining extent of the undertaking given to the Hong Kong Court had been infringed. He also concluded, secondly, that there had been no material failure fully and frankly to disclose the relevant circumstances to Robin Knowles J.

10. In his judgment, so far as particularly material to the application with which I am now dealing, Butcher J said at [28], the following:

> "I bear in mind that it is always open to the defendant to go to the Hong Kong Court to seek a determination that there has been a breach of the undertaking and, if that were done successfully, then no doubt that is a matter which the English Court would consider as to whether the injunction should be brought to an end."

11. Thus, before Butcher J, the position was that there existed a claim by the defendant, which Butcher J considered was being reasonably disputed on *bona fide* grounds by the claimant, that the making of the application in this jurisdiction for a freezing order had been in breach of the Hong Kong undertaking, and that there might be, if the defendant chose to pursue that point, an application of some appropriate kind that she might choose to make to the Hong Kong Court for a definitive determination there of that question of possible breach of the undertaking.

12. In those procedural and substantive circumstances, Butcher J nonetheless dismissed the discharge application and, as regards the disclosure obligation, ordered only, as I have already said, that disclosure of assets now had to be given by 8 April 2025, four days after his order. No application has been made to stay enforcement or execution of the effective, continued freezing order, including its asset disclosure obligations, as now in place under Butcher J's order, pending what is now an appeal to the Court of Appeal against Butcher J's decision.

13. That appeal, for which permission was granted by Popplewell LJ by an order dated 13 June 2025, is now listed to be heard on 23 April 2026. The defendant sought permission to appeal from the Court of Appeal, so as to challenge the approach adopted by Butcher J to the objection by reference to the Hong undertaking, seeking to argue by reference to two related grounds that the court here, on that hearing before Butcher J, should have considered and reached a finding as to the breach or absence of breach of the Hong Kong undertaking, in order then to be properly informed as to whether to continue or consider discharge of the injunction. That basis for challenging Butcher J's decision is described by Popplewell LJ in his order granting permission to appeal as arguable and as raising important points of principle.

14. That assists the defendant, but only to this extent, namely that I will proceed on the basis that there is more than a fanciful prospect of success on an argument that Butcher J should not have refused the discharge application. Although it is not spelt out in these terms in the grounds of appeal themselves before the Court of Appeal, it is evident from the relief sought on appeal, which is not remission to this court, but in effect that the Court of Appeal should determine that the discharge application should have succeeded and thus should set aside the freezing injunction, that consequential upon persuading the Court of Appeal, if the defendant does, that Butcher J should have grasped the nettle and taken a view on the question of breach of the undertaking given to the Hong Kong Court, it will be argued that the Court of Appeal then, exercising discretion afresh, should determine that point and decide in the defendant's favour that there was a breach of the undertaking. Although that is not, as far as I can see on first acquaintance with it, addressed separately in a self-contained set of submissions in the skeleton argument that will have been before Popplewell LJ when granting a permission to appeal, I consider I

should take it that he will have appreciated from the critique in that skeleton of the claimant's position in this court that the defendant was saying that the Court Appeal should find that there was a clear cut distinction, within the language of the release of the Hong Kong Court undertaking as originally given, between enforcement proceedings themselves, such as the Part 7 Claim here, and something like a freezing order application or claim in support of such proceedings, such as the Part 8 Claim here.

15. I therefore proceed on the basis that Popplewell LJ must have understood and concluded that there was more than a fanciful prospect that the defendant might prove, after full argument before the Court of Appeal next April, to be correct about that.

16. A third ground of appeal on which permission to appeal was refused, but which is also important for my purposes, was an objection that Butcher J erred in finding that the claimant had complied with its duty of full and frank disclosure before Robin Knowles J, so as to reach a conclusion not reasonably open to him. As I say, permission to appeal on that ground failed. Thus, as reflected in the language of Popplewell LJ's order, I proceed on the basis that there was no more than, if any, a fanciful prospect of the claim succeeding that the claimant had failed in that way when applying for the injunction.

17. The application now made, against all of that slightly complex procedural background, is by application notice dated 7 April 2025. It proposes that because the defendant, by an application issued in the Hong Kong Court on 3 April 2025, is seeking from that court an anti-suit injunction to restrain further prosecution of the Part 8 Claim, on her allegation that the bringing of the Part 8 Claim infringed the undertaking, the provisions of Butcher J's order concerning asset disclosure and the payment of the summarily assessed costs of the unsuccessful discharge application should now be varied, such that

the defendant does not have to provide any asset disclosure until doing so by way of affidavit within five days of the determination of the Hong Kong anti-suit injunction application.

18. As it seems to me, firstly, the substance of the application thus made is not in truth any different to the application that was before Butcher J and was determined effectively against the defendant, by his order as regards asset disclosure requiring that asset disclosure be provided by affidavit on 8 April 2025. The fact that an application of the type that Butcher J plainly had in mind might be made, has indeed been made, it seems on the very day on which Butcher J's order was being sealed by this court, and whether, when making and perfecting that order, Butcher J was aware that an application had actually been issued, is all to my mind irrelevant. The application brought in the Hong Kong Court is the very sort of application contemplated by Butcher J in para.28 of the judgment, in respect of which his decision was that that sort of application, whilst being contested in good faith, was not a reason to hold up the process of asset disclosure.

19. To be fair to Mr Chaisty KC and his submissions on behalf of the defendant, the application has not been resisted by Mr Ayoo on behalf of the claimant directly on the ground that it is not to open to be made because, in substance, it merely duplicates an aspect of the applications before Butcher J on which the defendant was unsuccessful. Although I therefore indicate that, if that had squarely been raised as the objection to the application, I am minded to think that it would have been a well-founded objection, I do not rest or rest only on that ground in coming to a view today as to what to make of the application.

20. Secondly, therefore, treating the application as one that it is appropriate to consider on its underlying merits, there was no material dispute as to the applicable principles. The well-known leading cases are: *Grupo Torras SA v Sheikh Fahad Mohammed Al-Sabah* [2014] 2 CLC 636, a case that, as other judges have mentioned, was decided in 1994 but only reported 20 years later; *VTB Capital v Malofeev* [2011] EWCA Civ 1252; *Motorola Credit Corporation v Uzan* [2002] EWCA Civ 989; and *Raja v Van Hoogstraten & Anor* [2004] EWCA Civ 968. Mr Chaisty KC helpfully drew to my attention, and relied relatively firmly on, a much more recent decision of Miles J, as he was still then in December 2024, *J&J Snacks Food Corporation & Anor v Ralph Peters & Sons Ltd & Anor* [2024] EWHC 3439 (Ch).

21. In short, the normal position, often referred to these days as standard for any freezing order, is to require asset disclosure to enable the claimant to police the order and to ensure that it has teeth in that connection, and because of the importance of the purpose for which the asset disclosure provision is made – although, of course, the court always retains a discretion as to what to do in the individual case – if there is a pending dispute as to whether the order should have been made at all, that is not a reason to defer, stay enforcement of, or otherwise allow non-compliance with, the asset disclosure provisions of the order as it then stands.

22. As Chadwick LJ said in *Raja*, in relation to the *Motorola* decision, that:

> "... provides support for the proposition that, in a normal case, a stay of the disclosure obligations is likely to be refused. But it is no authority for the proposition that a defendant will always be refused a stay of the obligation to make disclosure pending the final determination of his application to set aside the freezing order."

23. As Mr Ayoo in my judgment rightly emphasises, both because it further explains and justifies the general rule and because it has particular resonance in the present case, the Court of Appeal in the *Motorola* decision emphasised the importance of the disclosure order and, for example, at [28], recognised in particular that, as with so many matters that are ultimately discretionary, the question was one of a balance of justice and injustice, a balance of prejudice and degrees of prejudice, and, as a statement of the normal position, the prejudice that a defendant may say they have suffered if asset disclosure is not deferred, but they ultimately achieve the discharge or the setting aside of the freezing order on such a basis or on such terms as to indicate a view that it should not have been granted in the first place, is outweighed very heavily by the greater prejudice that a claimant will suffer if unable to police and be confident of the power of the freezing order obtained for anything like a substantial period of time if, ultimately, the grant of the order is upheld and history thus shows that, indeed, they were as entitled to the full extent of relief granted as they had originally proposed.

24. An aspect of that recognition of the normal balance of justice, injustice and prejudice is, see *Motorola* at [28]:

> "Steyn LJ [in *Grupo Torras*] also recognised that undoubtedly there would be prejudice to the Sheikh in that case if he was forced to disclose his assets and ultimately managed to set aside the proceedings for want of jurisdiction, but Steyn LJ emphasised that that was not anywhere near as much prejudice as would be suffered if the claimant was unable to police the Mareva injunction for some time. The emphasis in that case, as has been the emphasise in this case by Mr Cran, is that whereas at first sight it looks as though the Court in dealing with suspending the supply of this information for only a short period of time, that is until the hearing of the summons to set aside the freezing order on 17 July, the reality is that that decision is likely to be appealed to the Court of Appeal, and indeed it may well go to the House of Lords. The reality is that if it were suspended now, it would be suspended for a very great period of time."

25. That is recognition that it is always an invasion of privacy to require asset disclosure, but an invasion of privacy that is justified by the decision of the court that a freezing order was a proper and appropriate remedy with the consequences that come with that, for very good reason, bearing in mind the high hurdles that have to be passed before relief of that kind had been granted.

26. It is further recognised expressly in *Motorola* – see, for example at [30] – that, in particular, though it may be assessed if application is made to defer or excuse performance of asset disclosure obligations that there is a reasonably arguable case not yet determined for the setting aside of the freezing order if, at the time when that application – that is to say, the application to defer asset disclosure – comes before the court, the position still appears to be that there was, and is, a strong case, for example, that the defendant has committed some fraud or other dishonesty with a serious risk of dissipation, then the latter may well still outweigh the impact of the former in deciding where the balance lies as to whether asset disclosure should still be granted.

27. In the present case, I am satisfied, as submitted by Mr Ayoo, of all of the following matters.

    (i) Firstly, that as matters stand, and that is having independently assessed the relevant original evidence and not only because this proposition has never been challenged in the freezing order proceedings in this jurisdiction, there is a strong *prima facie* case that the defendant has been guilty of a fraud that is the underlying subject matter of the Hong Kong judgment and is a defendant who

has, at all times, presented a strong risk of the dissipation of assets justifying, other things being equal, a freezing order.

(ii) Secondly, that she has demonstrated, through conduct in the proceedings to date in Hong Kong, the reality of that serious risk in her case, extending to very real reasons for doubting her trustworthiness as regards compliance with orders of the court, including in relation to matters of asset retention and asset disclosure. In particular, as outlined in the evidence, there appears to have been a most unsatisfactory episode of repeated assurances provided to the Hong Kong Court that a very substantial sum representing something of the order of three quarters of the Hong Kong judgment amount was in place and successfully, in effect, frozen by the Hong Kong freezing order obtained by the claimant, only for it then to be asserted, without explanation or attempted justification, that the money had disappeared.

(iii) Thirdly, that, in those particular circumstances and the other circumstances outlined in the evidence, including elements of the defendant's tactical approach to the litigation generally, the need for effective policing of the freezing order in this case is particularly important. Even though the claimant has made some attempt at a generalised notification to major banks of the freezing order obtained, it has a very strong interest in the present case in: (a) being able to ensure that there are properly targeted notifications, which will not happen in the absence of disclosure of assets *to the claimants*; (b) having an ability to follow assets to the extent that there is, in the light of asset disclosure, a desire to do so, or evidence of the possible need to do so; and (c) being able to test, explore or investigate for itself whatever the defendant states by way of asset disclosure, as

there is real doubt, without any criticism of them, over whether the defendant's legal representatives will do so.

(iv) Fourthly, that in the present case it will not be adequate protection to the claimant, or a sufficient discipline for this defendant, to require, as is offered as a solution reflecting in part the outcome in *J&J Snacks*, the provision now of information as to assets (as at 8 April 2025 and as at now) but only in a confidential manner, such that only either the defendant's legal representatives, or possibly her legal representatives and the court, but not the claimant or its representatives, have access to that information.

28. Against all of those considerations, Mr Chaisty KC has only – but I do not dismiss it entirely by the use of that epithet – the single argument that, if the application was brought in breach of an undertaking given to the Hong Kong Court, that is a particularly serious matter, the defendant would wish to say, and is a factor potentially justifying the discharge of the injunction if the Court of Appeal were persuaded that that is what it should do. He says that takes this case out of the usual or normal.

29. In that regard, whilst accepting, of course, that it is ultimately a decision on its facts as to which it can therefore set no precedent, Mr Chaisty KC, as I indicated, placed significant reliance on Miles J's decision in *J&J Snacks*. The approach adopted there was to examine provisionally, and form a view as to, the nature and strength of the pending challenge to the freezing order. In the light of a conclusion, having undertaken that exercise, that there were "*at least some serious potential concerns about the process which has been followed here*" (per Miles J at [46]), and given the extent in that case of the deferral of the disclosure of information as to assets to the claimant that

would be involved, Miles J concluded that justice was better served by, indeed, deferring that disclosure.

30. The context in which he made that decision, however, is key. A freezing order had been granted without notice on 3 December 2024, requiring asset disclosure by 12 December 2024 and an affidavit by 27 December 2024. Miles J heard the matter on the 12 December 2024, listed as an early initial return date. The substantive outcome of that hearing was a continuation of the injunction without, at that stage, objection to the continuation pending a further and fuller return day argument fixed for February and a deferral of the obligation to disclose information about assets to the claimants until after that return date, therefore only two months or so in the future, but on the basis, as they offered, that apart from the release of the information to the claimant, thus making it disclosure to the claimant rather than merely provision of information to be disclosed a little later, the original order on the original timetable would still be, in substance, complied with.

31. The context further was – and it seems to me this is what Miles J meant by the comment at [46] I quoted, above – that he could see, on a provisional assessment of the basis upon which continuation of the injunction after full argument at the adjourned return date would be resisted, there were *prima facie* serious concerns about the way in which the claimant had presented the matter to this court, the way in which therefore the claimant had invoked the procedures and jurisdiction of this court in seeking to have the matter dealt with *ex parte*, both as to the substance of the freezing order application and as to particular terms of the order sought.

32. In my judgment, those are circumstances wholly incomparable to those of the present case, in which the defendant has unsuccessfully had her full return date argument. The injunction has been continued. She has had, at that hearing, consideration of whether there should be disclosure, as per the order made originally by Robin Knowles J, essentially straight away, to which the answer was, "Yes." As will be clear from my initial description of the way in which the claimant went about making the application, even if there is a non-fanciful prospect of Butcher J having responded to the question of possible breach of the Hong Kong undertaking incorrectly – that being the issue to be dealt with on appeal – there can be no proper criticism of the way in which the claimant invoked the freezing order jurisdiction of this court and presented the matter to Robin Knowles J.

33. Indeed, and hence my observation earlier as to the importance for the application today of the third proposed grant of appeal, the only attempt to suggest that there had been some failure in the way in which the application was placed before the court here failed before Butcher J, and permission to appeal has been refused.

34. The practical reality, therefore, is that – although, in part, by a process of *fait accompli* through non-compliance and then the obtaining of a short extension at the return date hearing – the order of Butcher J, made as part of continuing the injunction, in reality served the equivalent purpose to that which was achieved before Miles J by the respondent in that case. The proposition that because there is something more than a fanciful prospect that Butcher J might have taken an incorrect approach to the allegation of a breach of the Hong Kong undertaking and, allied to that, that it may be a more than fanciful prospect that the Hong Kong Court will decide that there was a breach of the undertaking, does not seem to me to begin to outweigh the real prejudice and injustice

that will be caused to the claimant if now, as is proposed, it receives no disclosure as to the defendant's assets within this jurisdiction until at the earliest, a date some five months or so from now, by when we will be more than a year since the disclosure ought originally to have been made.

35. I am satisfied that, although, it may be, that the argument that the obtaining of a freezing order here involved a breach of an undertaking given to a foreign court, is a slightly unusual or particular point to have arisen in a particular case, it is not, in the circumstances of this case, one that results in the proper balance being a departure from the normal recognised rule applied for all the reasons of policy for which it is normally applied that the provision of asset disclosure should not be deferred pending a final resolution of that argument.

36. For those reasons, I refuse the defendant's application, and I will hear counsel now as to what, if any, other orders I should make as to what the defendant must now do, or whether she is simply to be left as a result now in long-standing default of the order of Butcher J, or strictly it may be the order of Robin Knowles J as varied by the order of Butcher J, and it is a matter for her now to comply and for the claimant, if so advised, to take whatever steps it wishes to take in respect of her non-compliance.

---

37. At the legitimate request of the defendant's solicitors that I consider doing so, I supplement the above approved transcript of my *ex tempore* ruling to refer to the further point taken that Butcher J's order should be varied come what may so that the defendant need only provide a witness statement, not an affidavit. I agree that I did not deal with that additional point in my oral ruling at the end of the hearing on 14 November 2025.

That is because I considered that I had effectively ruled against it sufficiently during the course of the submissions that my conclusion on it did not need to be reiterated.

38. The argument was that filing and serving an affidavit would put the defendant's privacy and safety at risk, whereas filing and serving a witness statement would not, relying on matters raised by her in an application issued on 3 November 2025 in respect of which reporting restrictions exist so I shall not refer to their substance. The only difference between an affidavit and a witness statement upon which Mr Chaisty KC relied for this argument was that the former would include the name and address of a notary before whom it had been sworn.

39. This additional point had no merit. The defendant has previously provided evidence by affidavit, in the Hong Kong proceedings. As Mr Ayoo submitted, the defendant's thus evident ability to arrange to swear to a document before a notary located (in that instance) in central London provides no meaningful additional personal or private information about her. Furthermore, the Application Notice for the present application did not seek to limit the asset disclosure document to a witness statement, but sought an order requiring the defendant to give her asset disclosure by affidavit. It is usually important, and particularly important in the present case, given the defendant's conduct to date, to require that asset disclosure is given with the solemnity of a formal oath. There was no reason to relieve the defendant from complying with that important formality.
