



In The Supreme Court of Bermuda

CIVIL JURISDICTION

2024: No. 265

IN THE MATTER OF AFINITI LTD. (IN LIQUIDATION)

BETWEEN: **VCP CAPITAL MARKETS LLC** **APPLICANT**

AND

(1) MUHAMMAD ZIAULLAH KHAN CHISHTI
(2) SARAH JENNIFER POBERESKIN

RESPONDENTS

Application for continuation of injunctive relief and amendment of freezing and disclosure orders

MARTIN J *In Chambers*

Date of Hearing: 25 November 2025

Date of Reasons: 27 November 2025

Appearances

Claire Van Overdijk KC and Lalita Vaswani of Appleby (Bermuda) Limited for VCP Capital Markets LLC

Mr Muhammad Ziaullah Chishti in person

No appearance from Ms Pobereskin

REASONS FOR ORDER

Introduction and background

1. On 22 September 2025 VCP Capital Markets LLC (“VCP”) obtained freezing orders and disclosure orders against Mr MZ Chishti and his wife Ms SJ Pobereskin in aid of execution of the court’s interim costs award in favour of VCP in these proceedings (“the Order (s)”)¹.

¹ HB981-998 (references are to Hearing Bundle followed by page number).

2. The terms of the Orders against Mr Chishti and Ms Pobereskin were made in different terms. In summary, the Order against Mr Chishti covered various holdings in his name in a company called The Resource Group Pakistan Ltd (“TRG-P”) and various other assets worldwide. The Order against Ms Pobereskin was limited to shares in TRG-P which were acquired by her with monies given to her by Mr Chishti. The Arbitrator in a JAMS arbitration held that the circumstances in which those shares were acquired showed that the beneficial interest in those shares belongs to Mr Chishti as a matter of New York law. That finding has been upheld on appeal to the court in the US District Court for the Southern District of New York².
3. This court was satisfied on the basis of that finding and the other evidence relied upon by VCP that there is an arguable case on the evidence that Mr Chishti has a beneficial interest in the TRG-P shares that are registered in Ms Pobereskin’s name but which were acquired with money given to her for that purpose.
4. The court ordered that the freezing Orders and related disclosure Orders would be made on an interim basis and set a return date for the *inter partes* hearing on 25 November 2025. At the *inter partes* hearing VCP was to satisfy the court that it was appropriate to continue the injunctions in the terms granted at the *ex parte* hearing. Mr Chishti and Ms Pobereskin were given the opportunity to prepare their response and appear to oppose the continuation of the injunctions.
5. Since then, Mr Chishti has served 2 further affidavits (Chishti 4 and 5) in response to the requirement in the Order to disclose his assets. Mr Chishti has also served an affidavit (Chishti 6) in opposition to the court’s continuation of the injunction and/or to set it aside on various grounds. Chishti 6 was served just before the hearing³.
6. Ms Pobereskin has also served three affidavits explaining her asset position, the last of which is the updated and corrected version (Pobereskin 3). In that affidavit Ms Pobereskin stated that she is awaiting receipt of US\$4,732,220 less taxes on the sale of some of her shares in GH Smart & Company Investors I Inc (“the GH Smart shares”⁴).
7. By letter to VCP’s attorneys (copied to the court)⁵ Ms Pobereskin did not oppose the continuation of the injunction on condition she had the opportunity to challenge the finding that her assets belong to her husband. If she did not get that opportunity, then she said she wanted an adjournment and made complaints about late service.
8. In addition, VCP served Mr Chishti with the transcript of the *ex parte* hearing shortly before the *inter partes* hearing on 25 November 2025. Mr Chishti applied for an adjournment of the

² HB 403

³ VCP takes the point that strictly these affidavits are defective and are not properly admissible as evidence. For present purposes, the court has treated the affidavits as being evidence of their content, even if technically defective. Mr Chishti appeared in person and was examined on oath at his examination of means and referred to some aspects of his evidence in those affidavits. The court is prepared for present purposes to accept the affidavit evidence as if it had been properly sworn.

⁴ HB page 608. These shares are also referred to as ghSMART, but for consistency the court has used the spelling contained in Pobereskin 3.

⁵ 24 November 2025.

hearing so he could review the transcript and make submissions in relation to an alleged failure to give full and frank disclosure or fair presentation at the *ex parte* hearing. Mr Chishti said he needed further time to review the transcript before being able to fairly put his arguments on this point.

Adjournment and continuation of Order in revised terms against Mr Chishti

9. The court reluctantly granted the adjournment of the *inter partes* hearing on terms that the freezing Orders would continue in effect until the *inter partes* hearing is concluded and set a new hearing date for 7 January 2026 at 9.30 am for a full day. The court considered that Mr Chishti is entitled to a fair opportunity to consider the transcript in order to make his arguments. If there has been a material failure to provide full and frank disclosure or a fair presentation of the case, then this may justify the discharge of the injunction, unless the failure was not material or was innocent. The court did not consider that on balance it would be appropriate to force Mr Chishti to proceed unless he had reasonable opportunity to consider the transcript to support his argument that there had not been a fair presentation of the matter at the *ex parte* hearing. The court schedule did not allow for a short adjournment followed by a resumed hearing which would have afforded all parties sufficient time to address the court on the numerous points which are being taken by Mr Chishti.
10. However, as part of the terms of this adjournment, the terms of the freezing Order against Mr Chishti were also adjusted to reflect an increased limit on the restriction on his ability to dispose of his assets (in light of the increased enforcement costs incurred) and the removal of certain undertakings as to enforcement. The court also allowed the amendment of the disclosure Order against Mr Chishti to cover the matters which he agreed to produce during his Examination of Means.
11. These do not need to be considered in detail because Mr Chishti did not object to these revisions being made, except he criticised the reasonableness of the increased limit in respect of the additional costs of the enforcement proceedings and he opposed the making of an order in relation to the costs of the injunction application.
12. The increase in the restriction on disposal of Mr Chishti's assets does not guarantee that VCP will recover all the additional costs it has incurred, but it protects VCP against the risk of dissipation of assets with which Mr Chishti can meet his liability for the enforcement costs. Mr Chishti's liability to pay the amount claimed as enforcement costs will be debated at a future date⁶.
13. The court therefore granted the revised Order in the terms requested by VCP save that the court reserved the question of the costs of the *ex parte* hearing in September 2025 and the costs of the *inter partes* hearing on 25 November 2025. VCP is to submit a revised Order in the terms discussed at the hearing to reflect these amendments.
14. A practical reason that influenced the court's decision to grant the adjournment of the matter until 7 January 2026 is that Mr Chishti remains confident that he will be able to settle VCP's costs claim after the outcome of certain hearings in concurrent proceedings pending in Pakistan

⁶ Any award of costs will be subject to considerations of proportionality and reasonableness in accordance with the ordinary rules of taxation.

and New York, which are to be determined in December 2025. If those proceedings result in a determination one way or the other of Mr Chishti's rights, that determination will need to be taken into account in any further orders that this court makes.

Amendment of Order in relation to Ms Pobereskin

15. VCP also made an application to extend the freezing order and the disclosure order that was made against Ms Pobereskin on the basis that the circumstances have changed since the *ex parte* hearing. Ms Pobereskin has disclosed that she has sold some of her GH Smart Shares and she is expecting to receive the proceeds of sale of those shares shortly.
16. VCP argued that it has already shown that there is a clear pattern of behaviour that demonstrates that Mr Chishti has given monies to Ms Pobereskin to buy shares in TRG-P in which Mr Chishti has a beneficial interest and relies upon the arbitrator's findings (as well as the evidence referred to that supported that finding).
17. VCP submitted that the admitted evidence is that Mr Chishti gave Ms Pobereskin US\$3 million to purchase the GH Smart Shares in March 2022⁷, and that accordingly (taken together with the other evidence) there is an arguable case that Mr Chishti has a beneficial interest in those shares as well. Particular reliance was placed on the fact that the proceeds of the sale of the GH Smart Shares are likely to be paid into Ms Pobereskin's account at Bank of America, from which Ms Pobereskin has paid out large sums to settle various substantial legal expenses that have been incurred by Mr Chishti in his various legal proceedings around the globe. The US District Court for the Southern District of New York has issued a temporary restraining order (the "TRO") in respect of the monies in this account on the basis that it has been used as an account through which substantial sums have been paid in by Mr Chishti and Ms Pobereskin has made numerous payments out for the benefit of Mr Chishti⁸.
18. The submission is (broadly understood) that the arrangement whereby Mr Chishti has made large gifts to his wife which are invested in assets which are then sold and the proceeds are used to pay Mr Chishti's expenses are a 'sham'⁹ to disguise Mr Chishti's real beneficial interest in the assets in his wife's name. Accordingly, it was submitted that it is in the interests of justice to extend the relief to cover the GH Smart Shares and the proceeds of sale thereof, as there is 'good reason to suppose' or a 'good arguable case'¹⁰ that Mr Chishti is the true beneficial owner of the shares.
19. Because Mr Chishti's other assets are either illiquid or the subject of pledges or injunctions issued by the Sindh High Court, VCP submits that the proceeds of sale of the GH Smart Shares (and/or the remaining shares in GH Smart & Company that are in Ms Pobereskin's name) represent the most accessible assets against which VCP can execute its judgment.

⁷ HB 626 Burke 2 paragraph 47.

⁸ HB 946-8 at paragraphs 8-13 per Judge Rakoff.

⁹ **Snook v London & West Riding Investments Ltd** [1967] 2 QB 786, 802.

¹⁰ **TSB Bank International v Chabra** [1992] 1 WLR 231, 238 and **Phoenix Group Foundation v Cochrane et al** [2017] EWHC 418 (Comm) [17] per Popplewell J.

20. The court has given this submission very careful consideration both in light of the oral presentation by leading counsel and her detailed written submissions which the court has taken time to consider.
21. If the court is not satisfied that there is an evidential basis for making the claim that the GH Smart Shares are in reality owned by Mr Chishti (or that he has some beneficial entitlement in relation to them) then there is ‘no good arguable case’ to justify an amendment to include those assets in the freezing Order that applies to Ms Pobersekin. However, if there is a good arguable case, then this court has already determined that there is solid evidence of a risk of dissipation for the reasons given in the court’s ruling on 22 September 2025. The evidential basis for those reasons have not changed, and the court adopts them in relation to this application.

The court’s analysis

22. There are several factors in the evidence which need to be considered in evaluating whether the evidence discloses a good arguable case that the GH Smart Shares are in reality beneficially owned by Mr Chishti.
23. The precise legal theory on which VCP will seek to persuade the court that it can declare that the Mr Chishti has a beneficial interest in the GH Smart Shares (or the entire beneficial interest) will need to be pinned down before the court can make any orders enabling VCP to levy execution upon the shares or their proceeds of sale. At this stage, the court is analysing the evidence only to see if the claim that Mr Chishti has a beneficial interest in the GH Smart Shares has a realistic prospect of success.
24. The evidence *against* drawing the conclusion that Mr Chishti has a beneficial interest in the GH Smart Shares is (in summary) broadly as follows:
- (i) The gift of US\$3 million to Ms Poberskin which she used to purchase the GH Smart Shares was made in March 2022, long before the proceedings which gave rise to the disputes between the parties to this litigation began. There does not appear to be any evidential link between this gift and any of the other matters which persuaded the arbitrator to conclude that the purchase of shares in TRG-P by Ms Poberskin was part of a joint plan between Mr Chishti and Ms Pobereskin to acquire control of TRG-P.
 - (ii) Mr Chishti’s evidence under oath in the Examination of Means conducted by VCP on 24 November 2025 was that the opportunity to invest in the GH Smart Shares was personal to Ms Pobereskin because she was a partner in the business and not because Mr Chishti gave her the money to invest in those shares on his behalf. He said it was a gift to his wife to enhance her stake in the business in which she is a partner. This is a plausible explanation which has a ring of authenticity. It is true that this evidence was given by Mr Chishti in answer to questions by VCP’s counsel and not by Ms Pobereskin, nor is it corroborated by any documentary evidence. Even though the court has concerns about Mr Chishti’s previous conduct in these proceedings, those concerns do not justify the court in rejecting his evidence on this point without more.

- (iii) The evidence in this case is unlike the cases in which the court has found that the donor (or settlor) has retained a power of revocation or exercises legal unrestricted control over the assets which are the subject of a trust¹¹ or otherwise exercises unrestricted control over assets that are not in his or her own name¹². Ms Pobereskin exercises control, in the sense of being the only person who can authorise payments out of the account. The test for establishing a sham transaction is a stiff one¹³.
- (iv) It is not unusual for spouses to make generous gifts to one another, and the law will apply a (rebuttable) presumption of advancement in respect of a transfer of property between spouses made without consideration, at least as between the donor and donee¹⁴.
- (v) There is no evidence that Ms Pobereskin went along with the purchase of the GH Smart Shares in her name without caring what she was signing, or that the transaction was undertaken in form but was never carried out in substance¹⁵, nor is there any evidence that Mr Chishti and Ms Pobereskin had a common intention that the purchase of the shares did not to create the legal rights and obligations which they appeared to create¹⁶.

25. The evidence *in favour* of concluding that there is an arguable case that Mr Chishti has a beneficial interest in the GH Smart Shares or their proceeds is (in summary) broadly as follows:

- (i) Mr Chishti gave the whole of the purchase price for the GH Smart Shares to Ms Pobereskin (although in the Examination of Means Mr Chishti mentioned that Ms Pobereskin may have made a small contribution towards the purchase, how much is not clear on the evidence).
- (ii) The arbitrator in the US arbitration between Mr Chishti and The Resource Group International Ltd (“TRG-I”) concluded after hearing evidence that Mr Chishti and Ms Pobereskin engaged in a joint plan to acquire control of TRG-P by using Mr Chishti’s money to purchase shares in Ms Pobereskin’s name, and concluded that the shares acquired by Ms Pobereskin were in reality beneficially owned by Mr Chishti. This finding was upheld on appeal by Rakoff J¹⁷. This finding of fact is binding on Mr Chishti, and even though the decision may not bind Ms Pobereskin because she was not a party to the arbitration, she gave evidence in the proceedings. Mr Chishti is estopped from contending to the contrary. On this evidence, it is therefore plausible that the same arrangement was made between Mr Chishti and Ms Pobereskin with respect to the GH Smart Shares.

¹¹See the discussion in **Tassaruf Mevduati Sigorta Fonu v Merrill Lynch Bank & Trust Co (Cayman) Ltd** [2011] UKPC 17 [37] to [42]: the power must be tantamount to ownership.

¹² See **Serious Fraud Office v Litigation Capital Ltd** [2021] EWHC 1272 (Comm) [605] per Foxton J.

¹³ **Kremen v Agrest** (No 2) [2011] FLR 490, 491 and 499 per Mostyn J.

¹⁴ See the discussion in **Tribe v Tribe** [1995] 4 All ER 236 CA.

¹⁵ **Midland Bank Plc v Wyatt** [1997] 1 BCLC 242.

¹⁶ **Snook** (supra).

¹⁷ HB203.

- (iii) Ms Pobereskin has sold some of her GH Smart Shares and it is likely that the proceeds of sale will be paid into her account at the Bank of America. This is the same account from which she has paid out large sums to pay Mr Chishti's legal bills and other expenses. Mr Chishti said he asked Ms Pobereskin to fund his lawyers rather than paying his other obligations.
 - (iv) Mr Chishti has made arrangements to settle his costs liability to the Joint Liquidators (amongst other matters) on terms which have not been disclosed but which involve a payment over time. Mr Chishti has not made any proposals to settle his liability to VCP nor has he asked his wife if she will use any of her monies to pay this liability (on whatever terms she has agreed to pay his other liabilities).
26. The court takes no view at this stage as to what evidence will ultimately prove decisive or what attitude the court will take on a full review of the evidence at a hearing. The evidence is capable of being interpreted both for and against the conclusion that Mr Chishti is the beneficial owner of the GH Smart Shares.
27. However, VCP only needs to satisfy the court at this stage that there is an argument which has a realistic prospect of success¹⁸. The court is satisfied that VCP has met this relatively low threshold on the basis of the combination or aggregation of the following facts: (i) Mr Chishti gave Ms Pobereskin the money to purchase the GH Smart Shares (ii) Mr. Chishti also gave Ms Pobereskin the money to buy TRG-P shares and the arbitrator found that this was part of a plan by Mr Chishti to gain control of TRG-P and that in reality the TRG-P shares that Ms Pobereskin acquired with Mr Chishti's money were beneficially owned by Mr Chishti. This is a finding that binds Mr Chishti. It is therefore a plausible claim that the GH Smart Shares acquired by Ms Pobereskin with Mr Chishti's money may also be beneficially owned by Mr Chishti (iii) the various payments of Mr Chishti's legal expenses from Ms Pobereskin's Bank of America account at Mr Chishti's request denotes (at least a measure of) ownership or control over the funds in that account.
28. It was apparent from Mr Chishti's evidence to the court at his Examination of Means that Mr Chishti determines which bills get paid from the Bank of America account and which bills do not: he indicated that it was more important (to him at least) to pay the bills which were necessary to advance the success of his cause in priority to any other obligations. There is certainly no evidence that Ms Pobereskin decided independently which of Mr Chishti's expenses she would pay.
29. Taking into account all of the factors summarised above, the court is satisfied that VCP has established a sufficient evidential basis upon which to assert that in reality the assets held in Ms Pobereskin's name for which Mr Chishti provided the money are owned or controlled by Mr Chishti, and that these assets include the GH Smart Shares.

¹⁸ See **Chabra** and **Phoenix** (supra).

30. It is of course appreciated that both Mr Chishti and Ms Poberskin have said that none of this is true. They will each have the opportunity to put in evidence and address legal argument before any decision is made by this court as to whether any of the GH Smart Shares or their proceeds are in reality assets that belong to Mr Chishti. But for the time being, the court is satisfied that the balance of justice requires the court to preserve the position until a full hearing can be held. In light of the solid evidence of a risk of dissipation of which the court was earlier satisfied, it is therefore appropriate to extend the scope of the Freezing Order against Ms Poberskin to include the GH Smart Shares and/or any proceeds of sale.
31. The court is also persuaded that Ms Poberskin should disclose whether she has received any gifts from Mr Chishti in the past that she has used to purchase assets and whether she has disposed of those assets or what has become of them. Although this is not a tracing exercise or a discovery exercise, the pattern of interlinked financial transactions that has been demonstrated in relation to the TRG-P shares justifies an Order for disclosure of any other assets which have or may have been the subject of a similar arrangement.
32. As noted above, in the course of Mr Chishti's Examination of Means Mr Chishti explained that Ms Poberskin had agreed to pay some of Mr Chishti's liabilities to creditors on the basis that he would repay her when he succeeded in setting aside the injunctions over his TRG-P shares. The court asked Mr Chishti if he had asked Ms Poberskin to help him meet his liability to VCP. Mr Chishti said he had not asked her, but perhaps he should do so.
33. VCP requested that Ms Poberskin should answer whether she is willing to do so as part of the Order for further disclosure, and the court agreed that this was an appropriate question, given the background to her involvement in assisting Mr Chishti to meet his liabilities to other creditors. The revised Order for disclosure in respect of Ms Poberskin will also include a requirement to disclose to the court whether she is prepared to agree to assist Mr Chishti in paying his liability to VCP.

Conclusions

34. Accordingly, the court grants VCP's application to extend the Freezing Order to include the GH Smart Shares (and their proceeds of sale) and allows the amendment to the disclosure Order against Ms Poberskin in the terms sought to require further disclosure as to any past gifts and to respond to whether she is prepared to agree to pay some or all of Mr Chishti's obligation to VCP.
35. The adjourned hearing will resume on 7 January 2026 at 9.30 am in the Commercial Court.

27 November 2025



THE HON. MR. ANDREW MARTIN

PUISNE JUDGE