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Amended under the slip rule pursuant to CPR 40.12 (1)

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT



No. AC-2006-LON-
008296; CJA 173 and
174 of 2006

Neutral Citation Number:
[2024] EWHC 363
(Admin)

Royal Courts of Justice

Friday, 26 January 2024

Before:

MRS JUSTICE HILL DBE

IN THE MATTER OF THE CRIMINAL JUSTICE ACT 1988 (AS AMENDED)

IN THE MATTER OF SYED AHMED AND SHAKHEEL AHMAD Defendants

- and -

IN THE MATTER OF JUNFANG XU Applicant/
Interested Party

MS J XU appeared in person on behalf of the Applicant.

MR NEWBOLD appeared on behalf of the Crown Prosecution Service.

MR G PONS appeared on behalf of the Receiver.

J U D G M E N T

(Via Microsoft Teams)

THE JUDGE:

Introduction

- 1 This is my judgment on three applications that were heard by me on 23 January 2024.
- 2 The context for the applications is two earlier orders made by this court: a restraint order made against the assets of Syed Ahmed, the defendant, by Collins J on 23 February 2007 and a receivership order made by Mitting J on 13 January 2015. The current issue relates to the application of those orders as varied in various respects to a bank account held with HSBC in the name of the defendant's wife, Junfang Xu ("the HSBC account"). This was restrained by variation to the restraint order on 13 March 2023 by Andrew Baker J on a without notice basis.
- 3 The first two applications before me, both sealed on 17 August 2023, were made by Ms Xu. By the first, she sought to discharge the 13 March 2023 variation order and release the HSBC account from restraint. By the second she sought, in the alternative, an order that she could draw £500 a week in living expenses from the HSBC account. The third application, sealed on 8 January 2024, was made by the Crown Prosecution Service ("the Crown") to add the HSBC account to the receivership order.
- 4 This hearing was conducted by Microsoft Teams at the request of the defendant and Ms Xu as they currently live in Scotland. They represented themselves in both written and oral submissions. I was also assisted by the submissions from Mr Newbold, counsel for the Crown. The court appointed Receiver, Christine Barlett, had provided evidence to assist the

court on the material issues. Her counsel, Mr Pons, attended to deal with any matters arising, but not to make positive submissions.

- 5 The key evidence I considered was as follows: (1) a witness statement from Aron Bolton, a senior officer from HM Revenue & Customs based in their fraud investigation service dated 9 March 2023 that had been prepared in support of the application for the March 2023 variation; (ii) a further statement from Mr Bolton dated 21 August 2023 prepared in response to Ms Xu's application; (iii) a statement from Nasra Butt a specialist prosecutor employed by the Crown Prosecution Service dated 27 December 2023 prepared in support of the Crown's application to vary the receivership order; (iv) two statement from Ms Xu date 13 June 2023 that she had provided in support of her applications; (v) a third statement from Ms Xu dated 16 January 2024; (vi) a statement from the Defendant dated 15 January 2024; and (vii) a statement from the Receiver dated 9 January 2024.

The applications to be determined and the order in which they are to be determined.

- 6 Only Ms Xu's two applications had formally been listed to be heard on 23 January 2024. However, by their letter to the court dated 27 December 2023 enclosing their application, the Crown had asked that their application be heard at the same time, given the overlapping issues between all three applications.
- 7 The defendant and Ms Xu appeared to object to this course on the basis that while Ms Xu had read the Crown's application she had not had the opportunity to go through all the paperwork.
- 8 The Crown had served their application by email on 9 January 2024, two weeks before the hearing. Accordingly, they had given the defendant and Ms Xu considerably more notice

than the 7 days' period indicated by the RSC Order 115 rules 7 and 23 which continues to apply to applications of this nature.

- 9 The defendant had prepared a witness statement specifically in response to the application by the Crown dated 15 January 2024. Ms Xu had also provided a witness statement dated 16 January 2024 responding in broad terms to what she said the Receiver and the Crown Prosecution Service had said.
- 10 I was therefore satisfied that the defendant and Ms Xu had had sufficient notice of the Crown's application and that it was consistent with the overriding objective for all three applications to be heard together.
- 11 The Crown's application was also relevant to Shakeel Ahmad, the defendant's co-defendant, given that the receiver had been appointed to realise the assets of both the defendant and Mr Ahmad. Mr Newbold told me that it had not been possible to serve the application on Mr Ahmad. It was, however, unlikely that he would have much to say about the application given that any monies paid towards the confiscation order of the defendant will also be credited towards the confiscation order of Mr Ahmad. I was satisfied that this issue was no barrier to hearing the Crown application either. Provision can be made for Mr Ahmad to be given liberty to apply to the court if need be.
- 12 Having decided to consider the Crown's application I concluded that it was appropriate to consider that application first. This was because if that succeeded, Ms Xu's applications would fall away. Equally, if the Crown's application failed, the 13 March 2023 variation order restraining the HSBC account would likely be discharged.
- 13 As a final observation, during the course of submissions the defendant told me that he was bringing a fourth application seeking to restrain the assets of another party, Rohail Aslam. However, it did not appear that this application had been issued or served, nor was I

provided with a copy of it even in draft. It was therefore not appropriate to deal with this application at the hearing on 23 January 2024.

- 14 Mr Newbold pointed out that the application appeared to be legally flawed as the Criminal Justice Act 1988 does not permit a defendant to restrain a third party's assets. Further, he pointed out that the application appeared to be inconsistent with previous findings that had been made by Flaux J about the dealings between the defendant and Mr Aslam. It was, he said, a speculative application made in respect of unknown and unspecified assets. These matters indicated that the existence of the application "in the wings" was not a reason to delay determining the Crown's application.

The facts

- 15 This matter has a long and complex history involving many applications to this court as well appeals to the Court of Appeal and the Supreme Court. The history is set out comprehensively in the statements of Mr Bolton and Ms Butt. The key details for the purposes of these applications are as follows.
- 16 The defendant and a number of co-defendants, including Shakeel Ahmad, were convicted of conspiracy to cheat the public revenue on 28 March 2007. They were sentenced to periods of imprisonment – seven years in the defendant's case - which have now been served.
- 17 Confiscation proceedings followed pursuant to the Criminal Justice Act 1988 ("the CJA"). On 5 July 2010 the defendant and Shakeel Ahmad were each ordered to pay £92,333,667 by Flaux J sitting in the Crown Court at Leicester.
- 18 Following appeals against the confiscation orders to the Court of Appeal and the Supreme Court, the defendant and Shakeel Ahmad were each ordered to pay a confiscation order in

the sum of £16,145,098, with the total recoveries from two defendants, before consideration of interest, being limited to that sum.

- 19 An application was made by the Crown to this court for an appointment of an enforcement Receiver to realise the assets of the defendant and Shakeel Ahmad. The Receiver was appointed by Mitting J at a hearing on 13 January 2016.
- 20 To date, although £10,292,233.10 has been paid, £5,852,864.90, in addition to accrued interest, remains outstanding.
- 21 The receivership order was varied subsequently as disputes with third parties in relation to the ownership of the assets were resolved. By a variation order sealed on 4 July 2017 Jay J extended the receivership order to a large multi-roomed property called 'Southlands' in Ivor Heath, Buckinghamshire. This is held in the name of Amorel Properties Limited, a BVI company. The variation order recorded that the defendant and Shakeel Ahmad were the beneficial owners of Southlands.
- 22 In the course of an application to this court in March 2023 to suspend possession proceedings in relation to Southlands, Ms Xu provided evidence indicating that it had been let to tenants and the rental income paid into an HSBC account held in her name.
- 23 The Crown therefore applied to restrain the balance of the HSBC account. The previously made restraint order was varied to include the account by the order of Baker J to which I have referred. On 13 March 2023 it was restrained with a balance of £19,196.25.
- 24 Following a number of applications to this court and to the Court of Appeal the Receiver took possession of Southlands in 2023. It has now been realised and the monies paid in part-satisfaction of the confiscation orders made against the defendant and Shakeel Ahmad.

25 The Crown now seeks variation of the receivership order to include the balance held in the account, such that this realisable property can be recovered. Ms Xu seeks to discharge of the 13 March 2023 variation or, in the alternative, to be permitted to draw living expenses from the HSBC account.

The legal framework

26 The applications are made pursuant to the provisions in Part VI of the CJA. Although now repealed, certain transitional provisions preserve the CJA in respect of cases where the offence or offences, or any of them, was committed before 24 March 2003. They apply here because the criminal offences in this case involved a conspiracy to cheat the public Revenue arising from 32 transactions forming part of what is called a missing trader fraud between 13 and 30 April 2002.

27 Section 77 of the CJA provides for the making and variation of restraint orders.

“(1) The High Court may by order (referred to in this Part of this Act as a “restraint order”) prohibit any person from dealing with any realisable property, subject to such conditions and exceptions as may be specified in the order.

(2) Without prejudice to the generality of subsection (1) above, a restraint order may make such provision as the court thinks fit for living expenses and legal expenses.

(3) A restraint order may apply –

(a) to all realisable property held by a specified person, whether the property is described in the order or not; and

(b) to realisable property held by a specified person, being property transferred to him after the making of the order.

(4) This section shall not have effect in relation to any property for the time being subject to a charge under section 78 below.

(5) A restraint order –

- (a) may be made only on an application by the prosecutor
 - (b) may be made on an ex parte application to a judge in chambers;
and
 - (c) shall provide for notice to be given to persons affected by the order.
- (6) A restraint order –
- (a) may be discharged or varied in relation to any property; and
 - (b) shall be discharged when proceedings for the offence are concluded.
- (7) An application for the discharge or variation of a restraint order may be made by any person affected by it.”

28 Section 80 of the CJA provides for the appointment of an enforcement receiver. Section 80(1) says that where a confiscation order is made in proceedings instituted for an offence to which this part of this Act applies, the proceedings in question have not, or the application in question has not, been concluded and the order or variation is not subject to appeal,

“... the High Court may, on an application by the prosecutor, exercise the powers conferred by subsections (2) to (6) ...”

29 Subsection (2) gives a power in the High Court to appoint a receiver in respect of realisable property. Subsection (3) empowers the High Court to empower a receiver appointed under the previous subsection in relation to any realisable property other than property for the time being subject to a charge under section 78 to take possession of the property subject to such conditions or exceptions as may be specified by the court. The section continues:

“(4) The court may order any person having possession of realisable property to give possession of it to any such receiver.

(5) The court may empower any such receiver to realise any realisable property in such manner as the court may direct.

(6) The court may order any person holding an interest in realisable property to make such payment to the receiver in respect of any beneficial interest held by the defendant or, as the case may be, the recipient of a gift caught by this Part of this Act as the court may

direct and the court may, on the payment being made, by order transfer, grant or extinguish any interest in the property.

...

(8) The court shall not in respect of any property exercise the powers conferred by subsection (3)(a), (5) or (6) above unless a reasonable opportunity has been given for persons holding any interest in the property to make representations to the court.”

- 30 Under section 74(1) of the CJA, subject to section 74(2), which does not apply here, “realisable property” is defined as either: “(a) any property held by the defendant” or “(b) any property held by a person to whom the defendant has directly or indirectly made a gift caught by this Part of this Act.”
- 31 Section 74 makes further provision for the recovery of the value of what are called “tainted gifts”. The value of such gifts can be recovered from any property held by the recipient of the gifts. The relevant provisions are:

“(7) Subject to subsection (12) below, references in this Part of this Act to the value at any time (referred to in subsection (8) below as ‘the material time’) of a gift caught by this Part of this Act are references to –

(a) the value of the gift to the recipient when he received it adjusted to take account of subsequent changes in the value of money; or

(b) where subsection (8) below applies, the value there mentioned, whichever is the greater.

(8) Subject to subsection (12) below, if at the material time he holds -

(a) the property which he received (not being cash); or

(b) property which, in whole or in part, directly or indirectly represents in his hands the property which he received...

(10) A gift (including a gift made before the commencement of this Part of this Act) is caught by this Part of this Act if

(a) it was made by the defendant at any time after the commission of the offence or, if more than one, the earliest of the offences to which the proceedings for the time being relate; and

(b) the court considers it appropriate in all the circumstances to take the gift into account.

(11) The reference in subsection (10) above to an offence to which the proceedings for the time being relate includes, where the proceedings have resulted in the conviction of the defendant, a reference to any offence which the court takes into consideration when determining his sentence.

(12) For the purposes of this Part of this Act –

(a) the circumstances in which the defendant is to be treated as making a gift include those where he transfers property to another person directly or indirectly for a consideration the value of which is significantly less than the value of the consideration provided by the defendant; and

(b) in those circumstances, the preceding provisions of this section shall apply as if the defendant had made a gift of such share in the property as bears to the whole property the same proportion as the difference between the values referred to in paragraph (a) above bears to the value of the consideration provided by the defendant.”

32 Under section 102(1) property is widely defined and “includes money and all other property, real or personal ... including things in action and other intangible ... property.” Section 102(7) provides that property is held by a person “if he holds any interest in it.” Under section 102(10), property is transferred by one person to another if the first person “transfers or grants to the other any interest in the property.”

33 The court’s powers in relation to restraint and receivership orders are to be exercised in accordance with what is described as a legislative steer in section 82 of the CJA. The material parts of that are as follows:

“(1) This section applies to the powers conferred on the High Court by sections 77 to 81 above or on the Court of Session by sections 90 to 92 below, or on a receiver appointed under this Part of this Act or in pursuance of a charging order.

(2) Subject to the following provisions of this section, the powers shall be exercised with a view to making available for satisfying the confiscation order or, as the case may be, any confiscation order that may be made in the defendant’s case the value for the time being of

realisable property held by any person by the realisation of such property.

(3) In the case of realisable property held by a person to whom the defendant has directly or indirectly made a gift caught by this Part of this Act the powers shall be exercised with a view to realising no more than the value for the time being of the gift.

(4) The powers shall be exercised with a view to allowing any person other than the defendant or the recipient of any such gift to retain or recover the value of any property held by him.

...

(6) In exercising those powers, no account shall be taken of any obligations of the defendant or of the recipient of any such gift which conflict with the obligation to satisfy the confiscation order.”

34 As Mr Newbold highlighted, property need not be traced to criminality to be realisable. The confiscation legislation operates in broad terms to strip defendants or the recipients of tainted gifts of sums up to the value of that defendant’s benefit from crime, whether the property to be recovered is itself traceable to the criminality or not.

35 In *Manning v Glatt* [2002] EWHC 2495 (Admin) [27]-[36] Mumby J held that it is open to the High Court to make findings that tainted gifts have been made by a defendant even if such findings were not made in the original confiscation proceedings.

The CPS application

36 The issues on the Crown’s application were as follows:

(1) Whether the balance of funds in the HSBC account is realisable property for the purposes of section 80(2) and (3) of the CJA (“**the realisable property issue**”);

(2) If so, whether the discretion to vary the receivership order to include this account should be exercised (“**the discretion issue**”).

Issue (1): The realisable property issue

37 The balance held in the account is plainly “property” within the wide definition given to that word in section 102(1). The issue then is whether it is realisable.

38 The Crown put its case in this respect on both elements of section 74(1).

39 The Crown’s primary case was that although Ms Xu’s name is on the account the monies are in fact the defendant’s property and thus held by him within the meaning of section 74, as interpreted by section 102.

40 Ms Xu was adamant that this is her bank account and emphasised that it was her only account. She stressed through evidence and submissions how hard it had been for her and the defendant to cope financially, such that she had tried to earn some money somehow which is why she started letting Southlands and selling some jewellery online. She told me in submissions that she had run this business entirely herself.

41 The Crown relied on both the source of the funds forming the balance in the account, and the use of the monies previously received into the account.

42 The only bank account statements provided for the HSBC account were those from 3 November 2022 to 3 January 2023. The defendant, in his skeleton argument, suggested that

these provided an incomplete picture, but I note that no further bank statements had been provided.

43 Ms Xu accepted that the Southlands rental income was paid into the account.

44 The bank statements indicated a payment into the account on 19 December 2022 of £36 with the reference “Englebrecht LA Lin Jewellery”. This appears to be a payment made to Ms Xu for the sale of jewellery which I have indicated she has described as one of her business activities. There is a further payment in of £35 on 5 December 2022 which might reflect a similar transaction, and the Crown fairly accepted that these small amounts might relate to the jewellery business.

45 Otherwise, the payments into the account are overwhelmingly referable to the payments by the Southlands tenants (and indeed the Ms Englebrecht referred to in the jewellery entry from 19 December 2022 was one such tenant). This much is clear from the names of the people transferring the monies in, which tally with the names on the various tenancy agreements Ms Xu has provided in large part, and because the entries regularly describe the payment as being for rent, save in one case the description of the payment’s purpose is “depositrent4”.

46 Mr Bolton’s first statement at para.41 set out a very helpful table which identified all seven tenants of the individual rooms at Southlands and set out the dates of their tenancy agreements. For five of the tenants the table showed a corresponding payment on the bank statements. For the tenants of the remaining two rooms, their tenancies commenced on 6 and 11 January 2023 after the last entry on the bank statements that had been provided. Therefore it was not possible to match up any payments made with the evidence before the court. The pattern of the payments into the account being referable to the rental agreements

were nevertheless clear from the face of the bank statements and the remainder of Mr Bolton's table. Indeed, as I said, Ms Xu accepted that rental income from Southlands was paid into this account.

47 The account had a balance of £16,330.64 on 3 November 2022, the first date for which the bank statements had been provided. However, the tenancy agreements commenced before then with the oldest dating back to 1 August 2021. Ms Xu's first statement at para.8 also accepted that she had started renting out Southlands in May 2022. The Receiver has identified that southlands was advertised on Airbnb in 2021 and Ms Xu has recorded income from UK London property in the tax years 2020-2021 and 2021-2022. The defendant implied, in his skeleton argument, that these tax returns reflected income that was unconnected to Southlands, but no evidence was provided to support this suggestion. In my judgment, it is reasonable to infer that income was being generated from Southlands before 3 November 2022, and that this income was being paid into the HSBC account.

48 In some parts of her evidence and submissions Ms Xu referred to having arrived in the UK in 2019 with £20,000 of her own and said that she was gifted a further £30,000 by her mother in law, Freida Ahmed. However, she suggested in para.18 of her third statement that these funds enabled her to purchase a property at 21 Chapel Terrace, Hale, Cornwall. On that basis these funds were not the source of the balance of £16,333.64.

49 No other material source of funds in the HSBC account has been identified or evidenced by Ms Xu.

50 For these reasons, I find it more likely than not that the sole source of the funds in the HSBC account was rental income from letting Southlands.

51 At the time Ms Xu let out Southlands, it was subject to restraint by virtue of Collins J's restraint order from 23 February 2007. The defendant sought to argue that the restraint order did not prevent the letting out of Southlands. I disagree. It is clear from the wording of para.(2)(b) of the order that the defendant must not "in any way ... deal with any of his assets" which would include letting out a property. For the avoidance of doubt para.2(b) continues by referring to some specific properties and includes, at para.(2)(b)(v)(b) his interest in Southlands. No permission of the court was obtained for this use of Southlands.

52 Further, para.(3) of Mitting J's receivership order of 13 January 2016 required the defendant to deliver up any realisable property. He did not do so in relation to the rental income derived from Southlands.

53 Importantly, and perhaps more specifically for the purposes of the issue before me, although the terms of the tenancy agreements describe Ms Xu as the landlord and the sole owner of the leasehold or freehold interest in the property, this was incorrect. She held no such interest or entitlement to let out the property. Although Southlands was registered in the name of Amorel Properties, it was the defendant not Ms Xu who was, at all material times, the beneficial owner in accordance with the order of Jay J on 4 July 2017.

54 Further, Mr Newbold took me to evidence of handwritten amendments made to the rental agreements on such important issues as the duration of the tenancy and the level of deposit and rent. Some of these were annotated with the defendant's initials, suggesting his direct involvement in this activity.

55 Moreover, the evidence on the face of the bank statements show that the monies received into the account were used for the benefit of the defendant. Although Ms Xu told me in submissions that she would not give money to him and that she did not trust him with money, the bank statements suggested a different picture.

- 56 The bank statements show payments made to the defendant of £2,000, £4,000 and £1,000. Ms Xu said at para.30 of her third statement that some of this money was used by him to pay bills in relation to Southlands. She said the remainder was used by him to pay fees relating to his children in Sweden, understood to be children from his first marriage, illustrating very clearly him putting the Southlands income to his own personal use.
- 57 A further transfer was made from the account in the sum of £1,050 to Edge Properties with reference “116 Andrews 3.SA”. The defendant and Ms Xu were and perhaps are now living at **an address in Glasgow including the numbers 116 and 3**.
- 58 In my judgment, the fact that the source of the funds received into the HSBC account was the letting of property in which the defendant held an interest and in which Ms Xu did not, and the fact that a large proportion of the funds were transferred to the defendant, are both powerful indicators that the funds in the account are in fact the defendant’s property.
- 59 Ms Xu and the defendant contended that the monies in the account belonged to third parties, namely various people who had rented rooms at Southlands. They said that the monies represented the tenants’ deposits or perhaps rent that had to be refunded once they had to leave the property, the receiver having taken possession of it. She said that they were, in the tenants’ case, people who were angrily asking for the return of their monies.
- 60 I reject this argument for the following reasons. Several of the payments were made months after the commencement of the tenancy which his not consistent with them being deposits. The payments were clearly not safeguarded by Ms Xu, as deposits have to be according to the scheme referred to in the Housing Act 2004, section 2131. Indeed, some of the monies were spent or transferred out of the account as I have said. The rental agreement documentation is also unreliable as to what the agreements were provided in terms of rent

and deposit with several hand-written amendments on these key issues, and the figures in the agreements do not entirely tally with the figures Ms Xu gave as to what she said she had to return to her tenants. There is also a difference in law between the payment of a deposit which would be held on trust and the payment of rent which would not necessarily be held in the same way. Even if some of this money was rent, it is not rent that is owned by the current tenants. If they wished to recover that, they would have to bring a private law claim in the County Court.

61 I therefore find that it is more likely than not that the balance in the account was in fact the defendant's property, albeit held in an account in Ms Xu's name. 0

62 On that basis, it represents realisable property for the purposes of the CJA.

63 In light of those findings, it is not necessary for me to determine the second way in which the Crown put their case, namely that the rental income received into the account represents a tainted gift to Ms Xu and thus falls within the second part of section 74(1).

64 It is perhaps sufficient to say for present purposes that if I am found to be wrong with respect to the balance being the defendant's property, I would have found it to be a tainted gift for the following reasons. Ms Xu had no right of her own to let Southlands. Any right she acquired to do so must have been acquired from the defendant. There is no persuasive evidence of any consideration having been given for any such interest in the property. To the extent that it might be suggested that consideration was Ms Xu's work in maintaining Southlands, there is a contradiction with the evidence of the Receiver to the effect that the property was in a very poor condition. Any such granting of an interest in Southlands made without consideration was a gift. It was made after the date of the defendant's offending and would therefore have been caught by section 74. Having made those findings, I would

have exercised the discretion in favour of concluding that this was a tainted gift in accordance with the legislative steer in section 82.

Issue (2): The discretion issue

65 I turn then to the exercise of the discretion to vary the receivership order to allow the receiver to cover the balance held in the account.

66 These monies represent the fruits of receivership property obtained by the defendant or by his actions without reference to this court, to the receiver or to the Crown. A significant sum remains to be paid towards the confiscation order. Variation of the receivership order in this way is therefore consistent with the statutory steer set out in particular at section 82(2).

67 As Fordham J explained in *Asplin v DAS UK Holdings* [2023] EWHC (Admin) [16-19], the provisions of 82(2) and (4) create what different “prescribed purposes”. The first in section 82(2) means that the powers must be exercised “with a view to making available for satisfying the confiscation order ... the value for the time being of realisable property held by any person by the realisation of such property”; and the second, in section 92(4), requires the power to be exercised allowing any person other than the defendant or the recipient of any such gift to retain or recover the value of any property held by him. I have accepted Mr Newbold’s analysis to the effect that no such concerns about third party ownership arise here.

68 The defendant fairly identified, in his written arguments, that the £19,196.25 balance in the HSBC account is a relatively small sum compared to over £5.5 million outstanding on the compensation order. But that, in my judgment, is not a reason not to grant the application. To the contrary, granting the application to enable just over £19,000 to be realised is

consistent with the statutory steer in section 82. I observe that the figure of £19,196.25 is not itself a trivial sum.

69 The defendant's remaining arguments in the skeleton argument were to the effect that the Crown are unfairly and vindictively pursuing and persecuting him and Ms Xu through some form of vendetta. He said that they were acting contrary to the public interest and with an ulterior and/or racial motive. There was no basis for these assertions and I cannot accept them. In my judgment, the Crown's application was based on a careful application of the relevant legal framework to the available evidence, and for these reasons I grant the Crown's application.

Ms Xu's applications

70 Having varied the receivership order to include the HSBC account, it is appropriate to dismiss Ms Xu's applications.

71 The first application is dismissed because I have found that it is more likely than not that the HSBC account represents realisable property. It follows as a matter of logic that I am satisfied that the lower threshold of a good arguable case is met in relation to the property such that applying *CPS v Compton* [2002] EWCA Civ 1720 [38], the account should remain restrained.

72 The second application fails because now that the account is in receivership it should not be dissipated to provide Ms Xu with weekly expenses. Were it necessary to determine this issue, I would also have accepted the Crown's submission that she has not discharged the "burden of persuasion", to adopt the language of *SFO v X* [2005] EWCA Civ 1564 at [35], in respect of the issue of whether other sources of income are available from which her living expenses could be paid.

73 I say this for the following brief reasons. Ms Xu has not provided the detailed account of her financial circumstances which would be anticipated in support of an application of this nature. The HSBC account does not appear to have been used for living expenses. She and the defendant have not accounted for earlier rental income from Southlands despite requests to do so. She was the joint registered owner of the Chapel Terrace property between August 2021 and April 2023 and is director of the company known as Fang Properties UK Limited. She has only provided very vague assertions about the apparent disposal of this property and her involvement with this company and the assets it holds. There was no detailed evidence provided as to living expenses used by Ms Xu and the defendant in the period from March 2023 when the account was restrained and January 2024 when the applications were heard, no request for expedition having been made. It can therefore safely be inferred from my judgment that alternative assets are available.

Conclusion

74 Accordingly, for all these reasons I make the following orders:

- (1) The Crown's application is allowed.
- (2) I make a declaration as to the defendant's beneficial ownership of the HSBC account.
- (3) I vary the receivership order to include the balance held in the HSBC account.
- (4) I dismiss both Ms Xu's applications.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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