

## BRITISH VIRGIN ISLANDS HIGH COURT (COMMERCIAL DIVISION)

### ***Natali Osetinskaya -v- Golante Management Ltd; and Natali Osetinskaya -v- Usilett Properties Inc. Claim No. 0037 of 2013***

### BLACK SWAN JURISDICTION - WHETHER NON CAUSE OF ACTION DEFENDANT IS TO BE ENJOINED FROM DEALING IN SHARES - ASSETS OUTSIDE THE JURISDICTION - DISCLOSURE

The case concerns applications for freezing injunctions arising out of disputes relating to the ownership of assets originally held by two Cypriot companies in which the Applicant held a beneficial interest. In the proceedings against Golante Management Ltd, a freezing order was sought pursuant to the Court's Black Swan jurisdiction in aid of an injunction granted in Cyprus but subsequently discharged. On the *ex parte* and *inter partes* applications, the Commercial Judge declined to grant the order sought on the grounds that if the home Court did not see fit to keep in place injunctive relief, then there was no good reason why the BVI Court should act where the home Court had declined to do so.

The Application against Usilett Properties Inc was also founded on the Black Swan jurisdiction, and made to assist proceedings in Cyprus where an injunction was granted, albeit not against Usilett but those individuals said to be in control of same. The Court granted an order restraining Usilett from dealing with property in Finland, and from facilitating or registering dealings in its shares on the basis that it was just and convenient to give effect to any dealings that might be attempted in breach of the Cyprus injunction. In so far as it concerned the foreign Finnish property, the Commercial Court rejected the submission that the Black Swan jurisdiction was restricted to securing assets located in the jurisdiction. He held that "*where those assets are shares situate within the jurisdiction which provide the alleged foreign wrongdoers with 100% control of a BVI company, it will also usually be just and convenient to prevent the shares being rendered worthless by restraining the company from disposing of its property, whether that property is situate in BVI or abroad, at any rate where the evidence shows that it is a non-trading single asset company*". It is unclear, however, whether this conclusion

was to be treated as an extension of the Chabra jurisdiction of implicit in Black Swan itself.

The Court also refused to grant disclosure orders on the basis that the Black Swan jurisdiction did not entitle the Claimant in proceedings in this jurisdiction to interrogate the Respondent about its assets generally. That would be the function of orders made in foreign proceedings. He also noted that the delay in bringing an application for freezing orders tends to make claims about fear of dissipation less sustainable.

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