

SUPREME COURT OF SEYCHELLES

Reportable
MA 149/2025
(arising in CC
71/2025)

**IN THE MATTER OF THE INTERNATIONAL BUSINESS COMPANIES ACT, 2016
AND IN THE MATTER OF YIELD APP LIMITED (IN LIQUIDATION)**

STEPHEN CORK AND HADLEY CHILTON, JOINT LIQUIDATORS **Applicants**
(represented by Mr. Georges)

and

1.JASON CORBETT
2.JUSTIN WRIGHT
3.TIM FROST
4.JAMES SUTHERLAND
5.LUCAS KIELY
6.UNIFI GROUP LIMITED

Respondents

Neutral Citation: *Stephen Cork and Hadley Chilton v Jason Corbett and others* (MA 149/2025
(arising in CC 71/2025) (25th July 2025)
Before: N. Burian, Judge
Delivered: 25th July 2025

ORDER

Notice of motion to effect notice of petition outside the jurisdiction. On the strength of the affidavit evidence, motion is hereby granted, and accordingly, the Court orders service outside of the jurisdiction as follows:

1. Jason Corbett of Millennium Residence Tower C. Floor 8, Unit 2, No.14, Soi 20 Sukhumvit Road, Klong Toei, Klong Toei District, Bangkok, Thailand.
2. Justin Wright of The Rise Condominium Sukhumvit, 15/55 Sukhumvit Road, Klong Tan Nuea Sub-District, Vadhana District, Bangkok, Thailand.
3. Tim Frost of Marque Sukhumvit, Sukhumvit 39 Condo, Unit 11A3, 719/16, Sukhumvit Road, Klong Tan Nuea Sub-District, Vadhana District, Bangkok, Thailand.

4. James Sutherland of 6 Holland Way, Hayes, Bromley, Kent, BR2 7DN, United Kingdom.
 5. Lucas Kiely of 18 Beverley Avenue, London, SW20 0RL, United Kingdom.
 6. Unifi Group Limited of Craigmuir Chambers, Road Town, Tortola, VG 1110, British Virgin Islands.
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RULING

N BURIAN, JUDGE

- [1] By way of a petition, the Applicants seek declarations and relief under sections 340 and 341 of the International Business Companies Act, 2016 ('IBC Act') in respect of fraudulent and/or wrongful trading.
- [2] The Applicants now file this application by way of Notice of Motion supported by an affidavit sworn Stephen Cork of Cork Gully LLP, 40 Villiers Street, London, WC2N 6NJ, United Kingdom in MA 149/2025 in his capacity as a joint liquidator of Yield App Limited (in liquidation) for leave of this Court to serve the six Respondents with notice of the petition outside the jurisdiction pursuant to section 48 of the Seychelles Code of Civil Procedure ('SCCP').
- [3] The affidavit in support of the application avers that the Applicants and Respondents are the Petitioners and Respondents in the main suit CC 71 of 2025. The Respondents all reside outside the jurisdiction as follows:
- Jason Corbett of Millennium Residence Tower C. Floor 8, Unit 2, No.14, Soi 20 Sukhumvit Road, Klong Toei, Klong Toei District, Bangkok, Thailand.

- Justin Wright of the Rise Condominium Sukhumvit, 15/55 Sukhumvit Road, Klong Tan Nuea Sub-District, Vadhana District, Bangkok, Thailand.
- Tim Frost of Marque Sukhumvit, Sukhumvit 39 Condo, Unit 11A3, 719/16, Sukhumvit Road, Klong Tan Nuea Sub-District, Vadhana District, Bangkok, Thailand.
- James Sutherland of 6 Holland Way, Hayes, Bromley, Kent, BR2 7DN, United Kingdom.
- Lucas Kiely of 18 Beverley Avenue, London, SW20 0RL, United Kingdom.
- Unifi Group Limited of Craigmuir Chambers, Road Town, Tortola, VG 1110, British Virgin Islands.

- [4] The Respondents above-named are not residents or domiciled in Seychelles but according to the Applicants, are necessary and proper parties to the proceedings, which have been properly brought in this jurisdiction, being the place of incorporation and liquidation of the Company.
- [5] The Petition alleges that the Respondents were knowingly parties to the carrying on of the Company's business with intent to defraud creditors or for a fraudulent purpose, and/or that they engaged in wrongful trading contrary to their obligations under the IBC Act. The detailed grounds for these allegations are set out in the supporting affidavit filed with the Petition.
- [6] Counsel submits that section 48 of the SCCP sets out what appears to be an exhaustive list of grounds for service outside of the jurisdiction. This is because each ground in the list of grounds is separated by the word "or" in each case. However, as the chapeau of this section uses the permissive word "may", it can be interpreted as allowing the court to grant leave beyond the said grounds and as such encouraged this Court to apply its discretion to grant leave in this instance.
- [7] Alternatively, the Court may consider a more purposive approach to the construction of section 48 so as to not frustrate the substantive rights of the Applicants. Reference has been made to various foreign authorities namely; *Janesh s/o Rajkumar v Unknown Person*¹,

¹ [2022]SGHC 264

*Tulip Trading Ltd v Bitcoin Association of Singapore Pte Ltd*² and *VTB Capital plc v Nutritek Int'l Corp*³ in which cases the courts either sought procedural solutions allowing claims filed before their courts to be canvassed rather than frustrate legitimate claims or took a more purposive approach to the interpretation of the procedural 'gateways'.

- [8] Counsel also drew this Courts attention the Seychelles Supreme Court case of *Delorie v Government of Seychelles and another*⁴ in which case it was held that statutory provisions must be interpreted to further legislative intent and to avoid unjust and absurd outcomes.
- [9] It is submitted that a purposive interpretation of section 48 of the SCCP is encouraged so as to not frustrate the legislative intent of the IBC Act, which provides for personal liability of directors for wrongful or fraudulent trading. The obligations owed by the Respondents under the IBC Act were obligations to be performed in relation to a Seychelles-incorporated entity and their alleged breach has caused loss to creditors of a company under Seychelles Jurisdiction. A strict interpretation of section 48 to exclude service upon non-resident directors would render the IBC Act's personal liability provisions illusory which would defeat the clear legislative intent and allow directors to escape liability based solely on residency.
- [10] Alternatively, it is further submitted that the present application falls within the ambit of section 48(d) as the petition is founded on statutory duties imposed by section 340 and 341 of the IBC Act and that these duties are obligations to be performed within Seychelles which it is argued are akin to contractual obligations thus satisfying the requirement of section 48(d). It is averred that given the central connection of the subject matter to Seychelles law, and the fact that only the Supreme Court of Seychelles had jurisdiction over the Company's liquidation, it is submitted that this is a proper case for leave to serve the Respondents outside of the jurisdiction.
- [11] Lastly, it is verily believed that the Applicants/ Petitioners have a good cause of action against the Respondents and that it is in the interest of justice for this Honorable Court to grant leave for service outside of the jurisdiction.

² [2022] SGHC 264

³ [2013] UKSC 5a

⁴ [2017] SCCC 4

Law and analysis:

[12] The following provisions of the SCCP are relevant to the present application:

“47(1) No summons in civil and commercial suit shall be issued or served upon any defendant, whether a citizen or Seychelles or not, outside the jurisdiction of the Supreme Court, without leave of the court.

48. When service out of the jurisdiction is allowed

The issue and service out of the jurisdiction of a summons may be allowed whenever

(a) the whole subject matter of the suit is land or immovable property situated within the jurisdiction (with or without rents or profits); or

(b) any act, deed, will, contract, obligation or liability affecting land or immovable property, situate within the jurisdiction, is sought to be construed, rectified, set aside or enforced in the suit; or

(c) any relief is sought against any person domiciled or ordinarily resident within the jurisdiction; or

(d) the suit is founded on any breach or alleged breach within the jurisdiction of any contract wherever made, which ought to be performed within the jurisdiction; or

(e) any injunction is sought as to anything to be done within the jurisdiction, or any nuisance within the jurisdiction is sought to be prevented or removed, whether damages are or are not also sought in respect thereof; or

(f) any person out of the jurisdiction is a necessary or proper party to a suit properly brought against some other person duly served within the jurisdiction:

49. Every application for leave to issue and serve a summons on a defendant out of the jurisdiction shall be supported by affidavit stating that in the belief of the deponent the plaintiff has a good cause of action, and showing in which country the defendant is or probably may be found, and whether such defendant is a citizen of Seychelles or not, and the grounds upon which the application is made; and no such leave shall be granted unless it shall be made sufficient to appear to the court that the case is a proper one for service out of the jurisdiction.

- [13] I do agree that a strict interpretation of section 48, sets out what appears to be an exhaustive list of grounds under which the court 'may' grant leave for service outside the jurisdiction. The granting of leave is discretionary on the Judge based on the circumstances before it and upon considering the grounds or 'gateways' permissible. I must point out however, that our SCCP is outdated and requires significant updates to align itself with the developments in our law and the dynamic international business environment that we encourage and regulate through the offshore sector. I am of the belief that if I am to apply a narrow interpretation to section 48, I would be going against the legislative intent and would be preventing parties such as the Applicants from being able to seek recourse under section 340 and 341 of the IBC Act.
- [14] I share the view that the "purposive approach" in legal interpretation, when applied to service of documents outside a jurisdiction, means focusing on the intent and purpose behind the rules governing service, rather than solely relying on a strict, literal reading of those rules. This approach acknowledges that cross-border service can be complex and that a rigid application of rules might hinder justice, especially in modern, interconnected legal landscapes.
- [15] The purposive approach, involves examining the underlying purpose of section 48 when interpreting its meaning. In the context of service outside of the jurisdiction, this means looking at why the rules for service exist which in my opinion are to ensure fair notice to the Respondents and to maintain the integrity of the judicial system. The court after considering the rationale for these procedural requirements, would then be left to interpret these rules in a way that best achieves that purpose.

[16] The approach that this Court will be taking when considering the present application moves beyond a strict, literal reading of the words of section 48 and acknowledges that language can be ambiguous, and that a purely literal interpretation might lead to unintended or unjust results.

[17] In coming to a determination I have also considered the case of *Pepper v. Hart*⁵, in which Lord Griffith's stated:

"...The object of the court in interpreting legislation is to give effect so far as the language permits to the intention of the legislature ... The days have long passed when the courts adopted a strict constructionist view of interpretation which required them to adopt the literal meaning of the language. The courts now adopt a purposive approach which seeks to give effect to the true purpose of legislation and are prepared to look at much extraneous material that bears upon the background against which the legislation was enacted..."

[18] I also note Seychelles is a contracting party to the 1965 Hague Convention on the Service Abroad of Judicial and Extrajudicial documents in Civil and Commercial Matters, which convention aims to provide a streamlined process for serving documents internationally. I am of the belief that a purposive approach to the implementation of section 48 helps interpret the convention's provisions and ensures its effective implementation.

[19] Therefore apart from the list provided under the SCCP, I am of the view that the Court may consider various other factors, such as whether a real issue exists between the parties, whether the out-of-jurisdiction party is a necessary or proper party, the convenience and fairness of hearing the case in the chosen jurisdiction and any potential prejudice to the parties if leave is granted or refused. By applying a purposive approach, the Courts aims to ensure that the rules governing service out of jurisdiction are interpreted and applied in a way that promotes justice and fairness while also considering practical considerations.

[20] The Applicant additionally submits that as the Petition involves the statutory duties owed by a Seychelles incorporated company and its directors, which is enforceable only in Seychelles, that therefore the subject matter of the petition could be seen to satisfy section

⁵ [1993] A.C. 593, 617

48 sub-section (d) which permits service if “*the suit is founded on any breach or alleged breach within the jurisdiction of any contract wherever made, which ought to be performed within the jurisdiction*”. After considering the claim put forward in the petition, I am persuaded to agree that a wide interpretation of sub-section (d) could result in the determination that the suit which centres around a Seychelles incorporated IBC, which brings forth allegations of wrongful and/or fraudulent trading by the directors, which arises out of a purported breach of their contractual obligations to creditors and well as their statutory obligations under the IBC Act, could fall under the remit of section 48 sub-section (d).

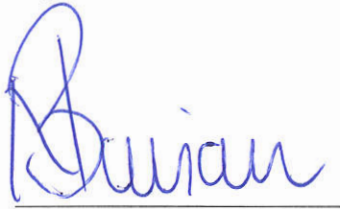
Conclusion and order:

- [21] Having considered the facts deponed in the affidavit in support of the application, the submission of Counsel for the Applicant, the authorities submitted and referred to, and the relevant provisions of the SCCP, I am satisfied that the application complies with section 47(1) read with section 49 of the SCCP, and that this is a proper case for service out of the jurisdiction.
- [22] I am further satisfied that when considering section 48 of the SCCP, the Court should refrain from taking a restrictive interpretation which would only frustrate proceedings and undermine the enforceability of the IBC Act, but that it should rather take a more purposive approach and consider the legislative intent of the section 48, which is to ensure that in causes where a real issue exists between the parties and where out-of-jurisdiction parties are a necessary or proper parties, that they are served and given the opportunity to appear before the Court. Furthermore, I am of the opinion that by applying a wider interpretation of section 48, sub-section (d) of the SCCP would allow the case to fall under its scope.
- [23] Therefore, this being a cause before this Court, the motion is hereby granted, and accordingly, I order that notice of petition and the petitioner proper be served on the Respondents outside the jurisdiction on their address as follows:
- Jason Corbett of Millennium Residence Tower C. Floor 8, Unit 2, No.14, Soi 20 Sukhumvit Road, Klong Toei, Klong Toei District, Bangkok, Thailand.

- Justin Wright of the Rise Condominium Sukhumvit, 15/55 Sukhumvit Road, Klong Tan Nuea Sub-District, Vadhana District, Bangkok, Thailand.
- Tim Frost of Marque Sukhumvit, Sukhumvit 39 Condo, Unit 11A3, 719/16, Sukhumvit Road, Klong Tan Nuea Sub-District, Vadhana District, Bangkok, Thailand.
- James Sutherland of 6 Holland Way, Hayes, Bromley, Kent, BR2 7DN, United Kingdom.
- Lucas Kiely of 18 Beverley Avenue, London, SW20 0RL, United Kingdom.
- Unifi Group Limited of Craigmuir Chambers, Road Town, Tortola, VG 1110, British Virgin Islands.

[24] The Respondents shall appear in court in answer to the petition, personally or by their attorney and agent, on 17th September 2025 at 3:30 pm.

Signed, dated and delivered at Ile du Port on 25th July 2025



Burian J

