

Carey Olsen obtains significant judgment in the BVI Commercial Court for Access Bank plc in US\$200+ million cross-border enforcement claim

Briefing Summary: In our latest briefing, Carey Olsen partner Richard Brown and associate Sean Kinney look at a recent BVI case where Carey Olsen has successfully obtained summary judgment in a US\$200+ million cross-border enforcement claim.

Service Area: Dispute Resolution and Litigation

Location: British Virgin Islands

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Created Date: 15 October 2025

The BVI Commercial Court (the "**Court**") has recently granted summary judgment in favour of Access Bank plc (the "**Bank**") against Dr Ambrosie Bryant Chukwueloka Orjiako ("**Dr Orjiako**"), together with his wife and eight BVI companies (the "**Companies**"), in a claim seeking the enforcement of a judgment of the English Commercial Court in the BVI (the "**Judgment Debt**").

The decision is the latest part of a long-running dispute between the Bank and Dr Orjiako, a prominent Nigerian businessman, over the enforcement of a loan facility which was personally guaranteed by Dr Orjiako (the "**Facility**"). Dr Orjiako purported to transfer the Companies to his wife between 2014 and 2017, after the Facility had gone into default and the syndicate lenders had called on Dr Orjiako's personal guarantee. The Bank claimed that the Companies remained beneficially owned by Dr Orjiako and were available for enforcement of the Judgment Debt, or alternatively, that the transfers to his wife ought to be set aside as transactions made with the intention to defraud creditors under section 81 of the Conveyancing and Law of Property Act 1961 (the "**CLPA**").

After obtaining a worldwide freezing order, further disclosure orders, and eventually an interim receivership order from the Court to prevent asset dissipation, the Bank applied for summary judgment on its claim. That application was heard by Justice Mithani over two days in July 2025. In a comprehensive judgment handed down on 1 October 2025, Justice Mithani granted summary judgment in favour of the Bank. The judgment is significant for those involved in cross-border enforcement and asset tracing. The key findings are summarised below.

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Summary judgment in cases alleging fraud or serious wrongdoing

The judge addressed whether it was appropriate to grant summary judgment in a claim involving allegations of serious wrongdoing or fraud, in the face of the defendants' argument that such claims should not be dealt with summarily but only following a full trial. He held that while caution is warranted, there is no absolute rule against granting summary judgment in such cases. The judge emphasised that summary judgment may be granted where, as was the case here, the evidence is clear and compelling, and where the defence is fanciful or unsupported by credible evidence.

The judge also confirmed the principle that the Court was not barred from evaluating the available evidence (and/or the lack of evidence) to decide whether there was a real prospect of a defence succeeding. If a respondent to a summary judgment application wished the Court to find that there was a realistic prospect of successfully defending the claim, it was incumbent on that party to adduce evidence in support of that defence or at the very least explain how the defence would be corroborated through disclosure and oral evidence at trial. That expectation did not reverse the burden of proof, which remained with the claimant, but it was not enough for the respondent to simply say that "something might turn up". In other words, the defendants' evidence and defence should not be taken at face value.

Beneficial ownership claim

The Court approached this part of the claim by reference to the law relating to the presumption of advancement/resulting trusts and drew analogies with the law relating to sham trusts. The judge held that the determination of the parties' subjective intention regarding the passing of beneficial interests on a transfer of legal title was a fact-based inquiry, and that the presumptions of advancement or resulting trust were a last resort only where there was no other evidence as to the parties' intentions (including evidence of how the asset was dealt with after the transfer).

The judge was satisfied that, when looked at in the round, the case against the defendants on the beneficial ownership claim was overwhelming and demonstrated that Dr Orjiako continued to control and benefit from the Companies after the purported transfers to his wife had taken place. Whilst recognising that the burden of proof fell on the Bank (as the claimant), the judge found that the response in the defendants' pleading and evidence was little more than a bare denial, unsupported by contemporaneous evidence and without any credible explanation as to what further evidence might be available if the case were to go to trial.

In those circumstances, the judge was satisfied that the case was an appropriate one for summary judgment, describing the prospect of a trial in such circumstances as a "*pointless waste of time*".

Transactions defrauding creditors: section 81 of the CLPA

Although he granted summary judgment on the beneficial ownership claim, in the alternative, the judge considered whether the transfers should be declared void as transactions defrauding creditors under section 81 of the CLPA. In doing so, he provided a helpful review of some of the key principles that fall for consideration in such claims.

Intention to defraud

The judge recognised that the test of intention was necessarily subjective, although he cited several English cases which had suggested that a fraudulent intent could be inferred where the transfer had the effect of putting assets out of reach of creditors, particularly where the transfer was for no consideration. However, he accepted that it remains somewhat unclear where the law stands in this regard, and that it was not appropriate for him to decide the point for the purposes of a summary judgment application. Consequently, it remained for the claimant to prove a fraudulent intent.

The Court held that the Bank had "*amply established*" the intent to defraud for the purposes of the summary judgment application. He considered that the available evidence showed "*a deliberate, systematic and fraudulent attempt, calculated to put the Shares [in the Companies] beyond the reach of the claimant and Dr Orjiako's other creditors.*" The judge found that the claimant had established that Dr Orjiako transferred assets to his wife at a time when he was well aware that he was unable to pay his debts as they fell due without recourse to those assets. He rejected the premise of Dr Orjiako's defence, which was that the transfers were carried out for estate planning purposes, describing that explanation to be "*not just fanciful but false*". The judge was satisfied that there was no prospect of Dr Orjiako adducing evidence to counter the contemporaneous evidence supporting the Bank's overwhelming case as to Dr Orjiako's fraudulent intent.

Dominant purpose and insolvency

The judge considered the English caselaw relating to whether the intention to defraud creditors needed to be the "dominant purpose" of a transaction to fall within section 81 MLPA. The judge explained that caselaw under section 423 of the English Insolvency Act has established that the intention to put assets beyond the reach of creditors need not be the sole or dominant purpose for a transaction to fall within that section. However, the judge found that it remained unclear whether the same reasoning should apply in relation to section 81 of the CLPA. He was satisfied, however, that Dr Orjiako's intention to put assets beyond the reach of creditors was indeed the sole or dominant purpose of the share transfers to his wife in this case.

The judge found that whilst insolvency was not a prerequisite for establishing a claim under section 81 of the CLPA, "*the insolvency of the debtor may lead a court to infer the existence of the requisite purpose, just as the absence of insolvency might cause a court to lean towards finding that the requisite purpose was lacking*". In this case, Dr Orjiako's "*hopeless*" insolvency was self-evident, in that he had failed to repay and seemed incapable of repaying the Facility and/or satisfying the Judgment Debt without recourse to the underlying assets held by the Companies. In those circumstances, the judge found that a finding of an intent to defraud creditors was "*inevitable*", on the basis that any suggestion that Dr Orjiako could overcome that conclusion at trial was "*wishful thinking*".

Valuable or good consideration

Under section 81 of the CLPA, where assets are transferred for "valuable" or "good" consideration, a claim will not succeed if the recipient acted in good faith and without notice of the intention to defraud creditors. Dr Orjiako's defence was that the shares in the Companies were transferred for consideration of natural love and affection, although it was unclear whether that was said to constitute valuable or good consideration. The judge noted that there was no definition in the CLPA of "valuable consideration" or "good consideration". He found that whilst there had been some obscure support for the suggestion that natural love and affection could be valuable or good consideration, there was greater support in the authorities for the contrary conclusion. As a result, the judge concluded that natural love and affection is neither valuable nor good consideration for the purposes of section 81 of the CLPA. In any event, the judge found that Dr Orjiako's wife had made it clear in her evidence that "*at all material times, she well knew what was going on*".

Significance

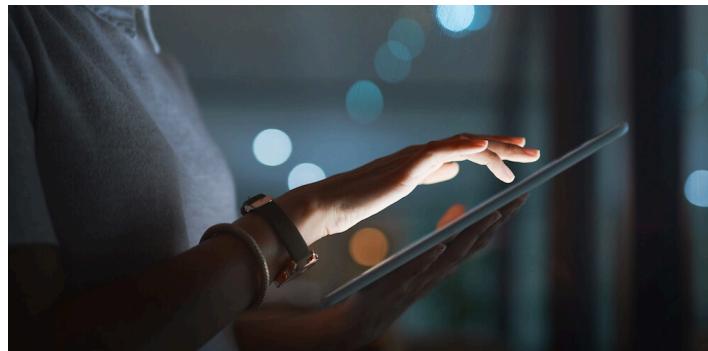
This ruling is a substantial victory for the Bank and sets a useful precedent for future cases involving asset tracing and enforcement in the BVI. It affirms the Court's willingness to look beyond formal ownership arrangements in appropriate cases, and to grant robust remedies where assets have been moved to frustrate potential recovery and enforcement efforts by creditors. The decision also provides valuable guidance on the application of the law relating to fraudulent conveyances and the circumstances in which summary judgment may be granted in fraud cases.

The decision is a further example of Carey Olsen's established track record in complex cross-border disputes and its commitment to delivering results for its valued clients.

Carey Olsen partner, Richard Brown, has had conduct of the case for the Bank from the outset of the BVI proceedings, assisted by associate, Sean Kinney. Steven Thompson KC of XXIV Old Buildings appeared as leading counsel for the Bank. William Edwards of 3 Verulam Buildings appeared as counsel for the Bank in earlier interlocutory hearings in the proceedings.

Carey Olsen (BVI) L.P. is registered as a limited partnership in the British Virgin Islands with registered number 1950.

Please note that this briefing is only intended to provide a very general overview of the matters to which it relates. It is not intended as legal advice and should not be relied on as such. © Carey Olsen (BVI) L.P. 2026.



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