IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 182

Suit No 1311 of 2015
Summons Nos 2483 of 2016 and 1814 of 2017

Between

Liberty Sky Investments Ltd

… *Applicant*

And

(1) Dr Goh Seng Heng
(2) Goh Ming Li Michelle

… *Respondents*

GROUNDS OF DECISION

[Injunctions] — [*Mareva* injunction]

Liberty Sky Investments Ltd
v
Goh Seng Heng and another

[2017] SGHC 182

High Court — Suit No 1311 of 2015 (Summons No 2483 of 2016 and Summons No 1814 of 2017)
Debbie Ong JC
7, 8 and 10 June, 29 July, 20 September 2016, 10 November 2016; 15 and 18 May 2017

28 July 2017

Debbie Ong JC:

1 This decision concerns two applications. Summons No 2483 of 2016 ("SUM 2483") of Suit 1311 of 2015 ("Suit 1311") is the plaintiff's application for a freezing order or *Mareva* injunction against the defendants. Summons No 1814 of 2017 ("SUM 1814") is the first defendant's application for the discharge of the *Mareva* injunction granted in SUM 2483.

2 For completeness, I mention a related application in Originating Summons No 509 of 2016 ("OS 509"). In OS 509, the plaintiff sought to compel the Oversea-Chinese Banking Corporation ("OCBC") to disclose certain documents relating to the first defendant's bank account in order to identify third parties, if any, from whom it may seek recovery of monies related to its claim in Suit 1311. As SUM 2483 and OS 509 are related, they were heard

together. My decision on OS 509 is set out in *Liberty Sky Investments Ltd v Oversea-Chinese Banking Corp Ltd and another* [2017] SGHC 20 ("*LSI v OCBC*"). The background facts of Suit 1311 can be found in *LSI v OCBC* (at [4] to [11]).

Background

3 In brief, the plaintiff's cause of action in Suit 1311 is that of fraudulent misrepresentation by the first defendant ("Dr Goh") and the second defendant, Dr Goh's daughter, Dr Michelle Goh ("Michelle"), to the plaintiff's representatives, Mdm Gong Ruilin ("Mdm Gong") and Mr Lin Lijun ("Mr Lin"). In the alternative, the plaintiff alleged that the defendants made negligent misstatements. The plaintiff's case is that the representations caused it to purchase 32,049 shares in Aesthetic Medical Partners Pte Ltd ("AMP") from Dr Goh for the sum of $14,442,050 ("the Sale Price"). The pleaded misrepresentations are mainly that:

(a) a trade sale of all the shares in AMP to Mr Peter Lim ("Mr Lim"), or a company controlled by Mr Lim, was imminent and would take place within one month from 23 October 2014 ("the Trade Sale representation");

(b) in the event that the trade sale to Mr Lim did not materialise, the defendants planned to list AMP through an initial public offering ("IPO") on the Singapore Exchange Mainboard, which was targeted for completion around March to June 2015, and that in any event an IPO would take place no later than 24 months after any acquisition of shares in AMP by the plaintiff ("the IPO representation"); and

(c) there were minority shareholders in AMP who could stifle the trade sale or IPO. The defendants needed to buy the interests of these shareholders out, and required funding from Mdm Gong and/or Mr Lin (or their nominee, *ie*, the plaintiff) ("the Minority Shareholders representation").

4 At the time of the hearing, the plaintiff sought the following reliefs in the main suit:

(a) the rescission of the SPA;

(b) that Dr Goh returns the Sale Price to the plaintiff;

(c) that the Dr Goh and Michelle pay damages to the plaintiff in the sum of:

(i) $28,844.10 being the stamp duties payable by the plaintiff pursuant to the SPA;

(ii) $598,233.35 being the foreign exchange loss suffered by the plaintiff; and

(iii) $7,567,249.64 being an amount the plaintiff would have earned if it had not purchased AMP's shares and had instead invested the monies in a public fund. Alternatively, the plaintiff sought a sum assessed based on its loss of opportunity of generating returns from investing the Sale Price.

5 In SUM 2483, the plaintiff applied for an interlocutory injunction against the defendants to restrain them from disposing their assets up to the sum of $22,616,377.09 (the "LS *Mareva* injunction"). I granted the LS *Mareva* injunction against Dr Goh but declined to do so as against Michelle.

6 On 13 April 2017, the Court of Appeal heard the appeal against a separate freezing order taken out by a different set of plaintiffs against Dr Goh in Suit 111 of 2016 ("Suit 111"). The Court of Appeal discharged the *Mareva* injunction in Suit 111 but did not release written grounds for its decision. In view of the successful appeal against the *Mareva* injunction in Suit 111, Dr Goh took out SUM 1814 for the discharge of the LS *Mareva* injunction granted in SUM 2483. I dismissed the application.

7 I now give my grounds for both the grant of the LS *Mareva* injunction against Dr Goh in SUM 2483 and the dismissal of his application for its discharge in SUM 1814.

SUM 2483 — application for the LS *Mareva* injunction

8 There are two requirements which the plaintiff must satisfy before the court will grant a *Mareva* injunction. The Court of Appeal in *Bouvier, Yves Charles Edgar and another v Accent Delight International Ltd and another and another appeal* [2015] 5 SLR 558 ("*Bouvier*") stated the legal principles clearly (at [36]):

> The requirements for the grant of *Mareva* relief are well established… (a) a good arguable case on the merits of the plaintiff's claim; and (b) a real risk that the defendant will dissipate his assets to frustrate the enforcement of an anticipated judgment of the court (referred to hereafter as a "real risk of dissipation" for short where appropriate to the context). A good arguable case is one which is "more than barely capable of serious argument, but not necessarily one which the judge considers would have a better than 50 per cent chance of success": *Ninemia Maritime Corporation v Trave Schiffahrtgesellschaft mbH und Co KG (The Niedersachsen)* [1983] 2 Lloyd's Rep 600 at 605 *per* Mustill J. In respect of a real risk of dissipation, there must be some "solid evidence" to demonstrate the risk, and not just bare assertions to that effect: *Guan Chong Cocoa Manufacturer Sdn Bhd v Pratiwi Shipping SA* [2003] 1 SLR(R) 157 at [18] *per* Chao Hick Tin JA.

Thus, in short, the first requirement is that the plaintiff has a good arguable case, and the second is that there is a real risk that the defendant will dissipate his assets to frustrate the enforcement of a judgment, if any.

Good arguable case

9 As the assessment of the case is undertaken at the interlocutory stage, only a good arguable case needs to be shown. A good arguable case is one that is "more than barely capable of serious argument" and need not be one that "the judge considers would have a better than 50 per cent chance of success" (see *Bouvier* at [36]).

10 In the present case, the plaintiff's primary case is in fraudulent misrepresentation. In order to assess whether the plaintiff has a good arguable case, reference is made to the elements of the plaintiff's cause of action in fraudulent misrepresentation, which are, in brief:

(a) a false representation made by the defendant in the knowledge that it was false and with the intention that the plaintiff should act on the representation;

(b) reliance by the plaintiff on the misrepresentation in entering the SPA; and

(c) the plaintiff suffered damage as a result.

11 In OS 509, I found that the plaintiff had demonstrated a *prima facie* case of its claim in fraudulent misrepresentation against Dr Goh (see *LSI v OCBC* at [26] – [45]). Although the standard in the present application is that a "good arguable case" has to be shown, the evidence that had led to my finding of a *prima facie* case of fraudulent misrepresentation for the purposes of OS 509 also

met the requirement for a good arguable case for the purposes of the present application in SUM 2483. I refrain from repeating the discussion in *LSI v OCBC* but will highlight the main evidence that led me to my finding of a good arguable case in SUM 2483.

Whether a false representation was made by Dr Goh in the knowledge that it was false and the intention that the plaintiff should act on it

12 First, I found that there was a good arguable case that Dr Goh had made the representations set out in [3] above. There was documentary evidence in the affidavit of Mdm Gong indicating that Dr Goh had represented to Mdm Gong and Mr Lin a trade sale or IPO was imminent and he needed the funds from them urgently to buy out the minority shareholders (for details of the documentary evidence, such as email and WhatsApp messages sent by Dr Goh to Mdm Gong and Mr Lin, see [31] of *LSI v OCBC*). This created the impression that he did not have the necessary funds himself.

13 Second, I accepted that a serious argument could be made that Dr Goh made the said representations without a reasonable basis or an honest belief in their truth. The evidence shown by Dr Goh were only suggestive of preliminary discussions between Dr Goh or AMP and Mr Lim's company, Thomson Medical Pte Ltd. There were no subsequent negotiations or follow-up actions suggesting that parties worked or intended to work towards an eventual trade sale (see *LSI v OCBC* at [35]). The same is true with regard to the alleged potential trade sale to Temasek Holdings (see *LSI v OCBC* at [36]). As for the IPO representation, the evidence adduced by Dr Goh only showed that there were preliminary discussions about a possible IPO taking place in October and November 2013 with the latest correspondence in February 2014. There was no evidence that Dr Goh had any factual basis for making the representation to the plaintiff on the IPO in October 2014 (see *LSI v OCBC* at [37]). In relation to the

Minority Shareholder representation, while Dr Goh had an agreement with two of the minority shareholders to be the proxy over all of their voting rights, it was not shown that the other minority shareholders would have been able to stifle any potential trade sale or IPO or that they had the intention to do so (see *LSI v OCBC* at [38]).

14 Third, from the documentary evidence available, I was satisfied that Dr Goh had painted a pressing situation where the funds were urgently needed to buy out minority shareholders. I therefore found a good arguable case that Dr Goh intended for his representations to induce the plaintiff into investing and entering the SPA within a short timeframe.

Reliance by the plaintiff on the misrepresentation in entering the SPA

15 Dr Goh took the position that the plaintiff was aware of and accepted the possibility that the trade sale or IPO may not take place. He cited certain terms of the SPA in support of this (see *LSI v OCBC* at [9] and [41]). But this does not mean that the plaintiff did not consider it a likely outcome or that Dr Goh's representations as to the trade sale and IPO did not induce it to enter into the SPA. The Court of Appeal has established in *Panatron Pte Ltd and another v Lee Cheow Lee and another* [2001] 2 SLR(R) 435 at [23] that the misrepresentations need not be the *sole* inducement to a party entering into a transaction. The misrepresentations would be actionable if they played a real and substantial role in the plaintiff's decision to enter into the SPA. Thus, for the same reasons set out in *LSI v OCBC* (at [43] and [44]), I was satisfied that there is a good arguable case that the plaintiff relied on the misrepresentations by Dr Goh and as a result, were induced into entering the SPA.

Plaintiff's alleged damage as a result of the misrepresentations

16 I accepted that there was a serious argument to be made that the plaintiff invested the Sale Price due to the misrepresentations and incurred losses as a result. Besides the loss suffered due to the difference between the Sale Price and the current value of the shares, the plaintiff had also shown a good arguable case of losses stemming from stamp duties paid and foreign exchange losses.

17 I therefore found that the plaintiff had shown a good arguable case against Dr Goh for their claim of fraudulent misrepresentation.

Real risk of dissipation

18 The plaintiff bears the burden of demonstrating that there is "solid evidence" that Dr Goh would dissipate his assets to frustrate the enforcement of an anticipated judgment (see *Bouvier* at [36]).

19 I accepted that the plaintiff had shown solid evidence of a risk of dissipation on the part of Dr Goh. I considered the conduct of Dr Goh with respect to the misrepresentations made and the findings of a report prepared by Ferrier Hodgson Singapore.

Allegations of dishonesty

20 The court may infer a real risk of dissipation from a good arguable case of dishonesty. This alleged dishonesty, if well-substantiated, would be relevant. However, *Bouvier* also clarified that dishonesty on the part of the defendant in itself, without more, would not necessarily result in a finding of a risk of dissipation, but depended on the nature of the dishonesty being alleged. The Court of Appeal observed that (at [95]–[96]):

> This is not a case where Mr Bouvier misappropriated the respondents' assets through a series of fictitious or illusory transactions.... The fraud or dishonesty that is alleged in this case *is not in the nature of a complex machination or an elaborate scheme*. The ploy in this case, if proved, was deceptively simple: Mr Bouvier exploited the asymmetries of information inherent in an opaque market to turn a profit.
>
> [emphasis added]

The court has to study the specific allegations of dishonesty levelled at the defendant in each case. The allegations of dishonesty, if proven to the standard required of a good arguable case, will be relevant if it is of such a nature that it has a real and material bearing on the risk of dissipation (see *Bouvier* at [93] and [94]).

21 In the present case, the cause of action is fraudulent misrepresentation. One of the elements in proving this cause of action is dishonesty on the part of Dr Goh — he must be shown to have made the representation despite knowing it to be false. The alleged dishonest conduct is at the heart of the claim against Dr Goh. He is alleged to have represented facts he knew to be false or had no reasonable basis for believing were true in order to persuade the plaintiff to invest in the company. The stories Dr Goh allegedly told are not the sort that stemmed from naivety or an abundance of optimism. The alleged misrepresentations, if proven to be true, were likely carefully crafted in order to obtain funds from the plaintiff in the shortest possible time — by combining the promise of a golden opportunity with the need to secure it urgently. I found these allegations of fraud to have been made out to the standard required of a good arguable case. This finding went towards my assessment of whether there is a real risk that Dr Goh will dissipate his assets to avoid enforcement of a judgment that may be obtained by the plaintiff.

22 My view that there is a real risk of dissipation of assets is also supported by findings of questionable conduct set out in a report prepared by Ferrier Hodgson Singapore ("the FH Report"). The FH Report was commissioned by a different set of parties who were plaintiffs in Suit 111 of 2016 ("Suit 111") in support of their application for a freezing order against Dr Goh and Michelle. The FH Report was relied on to prove that Dr Goh and Michelle had breached their fiduciary duties owed to the plaintiffs in Suit 111. The parties agreed that the FH Report is admissible. However, Dr Goh submitted that little weight ought to be given to the report. I found the FH Report to be relevant. If the FH Report shows that Dr Goh had acted with a lack of commercial morality, this could demonstrate that Dr Goh's probity may not be relied on (*Solvadis Commodity Chemicals GmbH v Affert Resources Pte Ltd* [2014] 1 SLR 174 at [23]).

23 In examining Dr Goh's conduct as set out by the FH Report, I found the following matters to have raised the greatest concern, and were the most relevant to the issue of whether fraud or dishonesty indicating a risk of dissipation existed:

(a) Licence Agreement ("LA")

(b) The small cheque mechanism

(c) Contract for professional services 2016 ("CPS")

(d) Use of small cheque mechanism pursuant to the CPS

(e) The alleged round-tripping

Licence Agreement

24 A Licence Agreement ("LA") dated 1 July 2014 was entered into by Dr Goh and GSHKML Pte Ltd, AMP and Aesthetic Medical Holdings Pte Ltd ("AMH"), a wholly owned subsidiary of AMP. The directors of GSHKML Pte Ltd are said to be Dr Goh and his family members. Under the LA, Dr Goh was to be paid a one-time down payment of $3,745,000, monthly payments of $267,500 for the period of 1 July 2014 to 30 June 2015, a payment of $535,000 on 1 January of every calendar year and monthly royalty payments of $267,500 in perpetuity. These payments were "royalty payments" for the intellectual property in Dr Goh, his name, trade marks relating to Dr Goh's name and his medical methods, which he licensed to AMP. Between July 2014 and October 2015, Dr Goh was paid approximately $8 million.

25 The circumstances surrounding the commercial viability and justification for the LA raised some concerns. Prior to the LA, Dr Goh was being paid a monthly salary of $200,000 under a 2012 Service Agreement, which is significantly less than the sums payable under the LA. It was not shown in these proceedings that the 2012 Service Agreement was terminated.

26 Whilst there was a board resolution approving the LA, all the signatories were, save for Mr Yao Zhi Lian, family members of Dr Goh. The plaintiff submitted that given that a substantial portion of the shareholding of AMP was held by shareholders other than Dr Goh, his family members, and RSP Investments, it was irregular that shareholder ratification of the resolution was not obtained. Instead, it appeared that the shareholders of AMP were kept in the dark about the large sums of royalty payments made to Dr Goh under the LA.

27 The FH Report gave the impression that Dr Goh was systematically extracting funds from AMP to the detriment of other shareholders and creditors of AMP.

The small cheque mechanism

28 In June 2015, corporate governance measures were imposed in AMP which required that cheques for sums greater than $100,000 be signed by both Mr Nelson Loh ("Nelson") (a director of AMP) and Dr Goh. In a WhatsApp conversation dated 18 November 2015, Dr Goh discussed a "smaller cheque mechanism" with other AMP personnel (ie, Michelle, Denie and Lee Kin Yun ("LKY")). This conversation arose after Nelson queried whether AMP had paid Dr Goh royalties (presumably under the LA) with "smaller cheques". In the messages, Dr Goh discussed and suggested how to "craft [a] reply" to Nelson to pre-empt any more queries. The messages and tone used revealed the existence of clandestine conduct which the persons involved sought to conceal. They demonstrated Dr Goh's willingness to bypass corporate governance measures.

Contract for Professional Services 2016

29 The FH Report also detailed a number of actions taken by Dr Goh in the early months of 2016. First, on 25 January 2016, Dr Goh entered into a Contract of Professional Services ("CPS") with AMP for the sum of approximately $816,000. The CPS is a short document of just three paragraphs stating that AMP had engaged Dr Goh as a "professional locum" to service patients and that "Dr Goh has requested his compensation to be a minimum 60% of AMP's gross top lines to be paid weekly". Even though the CPS was dated 25 January 2016, the CPS purported to grant Dr Goh the benefit of all sales from an earlier period, commencing November 2015.

30 It is noted that the Contract was signed by LKY – a party aligned with Dr Goh – as acting CEO on behalf of AMP, and that there was no board approval sought for the CPS. LKY was recorded in the FH report as advising that board approval for the CPS was not necessary because it was an "operational matter that could be agreed between him and Dr Goh". LKY stated that the CPS was required because the "royalty payments had been stopped [and] there was a need to have Dr Goh engaged". From the evidence before me, it appeared that the CPS was entered into after Dr Goh demanded royalty payment for November 2015 but was not paid.

31 However, in my view, the entry into the CPS did not seem to be a purely operational decision. The fact that it allowed Dr Goh to be paid 60% of all sales (including packages with future obligations to provide services) meant that the CPS would have had a great financial impact on AMP. It was quite unlikely that such a contract would only be an "operational decision" which the other directors or shareholders would think can be entered into unilaterally by LKY. I also considered the plaintiff's submission that Dr Goh was already obliged to work for the company under the 2012 Service Agreement and there was no reason to think that the CPS was required to procure his continued services.

Use of the small cheque mechanism pursuant to the CPS

32 Dr Goh was issued ten small cheques amounting to $816,811.99 from AMP only two days after the CPS was entered into (*ie*, on 27 January 2016). This appeared to be an attempt to circumvent the corporate governance procedure noted above. Shortly thereafter on 2 February 2016, Dr Goh resigned from AMP. In this regard, LKY's explanation for the commercial necessity of the CPS, namely that Dr Goh had informed LKY that he would not be working for AMP if he was not paid, and that the CPS was therefore "critical to the

survival of AMP's business", is inconsistent with Dr Goh's subsequent resignation as a director of AMP on 2 February 2016, 8 days after entering into the CPS.

33 The manner in and the pace with which these events took place, the apparent lack of commercial justification for the CPS, the lack of board approval for the CPS, the issuance of ten small cheques to circumvent the corporate governance measures and Dr Goh's subsequent resignation from AMP caused grave concerns.

The alleged round-tripping

34 On the same day when the ten cheques were issued, Mdm Koh Mui Lee ("Mdm Koh") (Dr Goh's wife) loaned $700,000 to AMH. This was referred to by the plaintiff as the "round-tripping" of funds where funds moved from Mdm Koh to AMH and from AMP to Dr Goh. The loan was disbursed pursuant to a loan agreement between Mdm Koh and AMH dated 22 October 2015. As provided in the loan agreement, a charge and mortgage were registered against two D'Leedon properties in January 2016 as security for the loan.

35 Whilst it is true that the loan agreement had been signed before the disbursement of $700,000, there remained some doubt as to whether these transactions were all above-board. Dr Goh argued that it did not make sense for Mdm Koh to put money into AMH for the purposes of paying Dr Goh when Dr Goh could simply have been paid directly under the CPS without the loan from Mdm Koh. He also pointed out that AMH and AMP are separate legal entities, and that the $700,000 received by AMH from Mdm Koh went to paying doctors' fees, staff salaries and the like, so there was no "round-tripping".

36 Although AMP and AMH were separate entities, they were also parent and subsidiary companies with matters managed as a group of companies. The LA was signed by representatives from AMP and AMH. AMH had borrowed a sum of more than $4 million from AMP to purchase the D'Leedon properties. In the minutes of an extraordinary general meeting of AMH dated 23 October 2015, AMP called for immediate repayment of the loan to meet its "cashflow requirements". It was in this context that Mdm Koh offered to extend a "bridging loan" of $2 million to AMH "for the purpose of repaying" the monies loaned by AMP to AMH. Pursuant to this resolution, Mdm Koh entered into the loan agreement with AMH and transferred $700,000 to AMH. It appeared to me from this that Mdm Koh's monies were intended to put AMH in funds to repay its loan to AMP (and thereby ease AMP's cash flow issues as well).

37 On the face of AMP's financials in 2015 and as observed in the FH Report, there was a large deterioration in AMP's cash and cash equivalents from 2014 to 2015. A pay-out of $816,811.99 to Dr Goh would have depleted a very substantial portion of AMP's cash reserves. The plaintiff submits even if there was no round tripping, this was another instance of Dr Goh preferring his own interests by taking a large sum from the company which had cash flow issues.

Finding on real risk of dissipation

38 In my view, the plaintiff had shown that there is a good arguable case that Dr Goh made the fraudulent misrepresentations detailed at [3] above. At the heart of the fraudulent misrepresentations is Dr Goh's dishonest conduct in making claims that he knew to be untrue or had no reasonable basis to believe to be true. There is solid evidence in the form of various email and WhatsApp messages from Dr Goh to Mdm Gong and Mr Lin containing the

misrepresentations which I found to have been proven to the standard of a good arguable case.

39 Further, the plaintiff had also adduced "solid evidence" demonstrating a lack of probity on the part of Dr Goh in his dealings with others, which is indicative of a propensity to dissipate assets through the use of covert devices. The key points from the FH Report as described above are suggestive of the lack of commercial morality on Dr Goh's part and reveal Dr Goh's adeptness and inclination to shift funds through various devices. In fact, the overall picture painted by the FH Report is that Dr Goh meticulously sought to extract moneys from AMP through questionable means for his own benefit.

40 I therefore found that there was a real risk of dissipation by Dr Goh of his assets in order to frustrate the enforcement of a judgment against him in Suit 1311.

Claim against Michelle

41 I had some doubts as to whether there was a good arguable case in the cause of action of fraudulent misrepresentations as against Michelle. Most of the plaintiff's submissions focused on representations made by Dr Goh. In the email and WhatsApp messages adduced as evidence, Michelle was only a participant and even then, only in some conversations.

42 I did not find that the plaintiff had adduced solid evidence of a risk of dissipation in respect of Michelle. The alleged misrepresentations were made by Dr Goh and did little in revealing Michelle's state of mind. The concerns raised in the FH Report also pertained mainly to the actions of Dr Goh. While Michelle was a participant in some conversations, I did not think that this was sufficient basis in itself for me to find a risk of dissipation on Michelle's part.

43 Accordingly, I dismissed the plaintiff's application for a freezing injunction in respect of Michelle.

Delay in making the application

44 Dr Goh submitted that the court should dismiss the plaintiff's application because of the plaintiff's inexplicable delay in making the application. While mere delay, by itself, will not be dispositive of the plaintiff's action for a *Mareva* injunction, it may be indicative of a collateral purpose on the plaintiff's part (see *Bouvier* at [109]-[114]). The inquiry thus centres on the length of the delay and the plaintiff's explanations for it against all the circumstances of the case.

45 I took the view that the delay on the plaintiff's part was not too significant and did not render the plaintiff's application liable to be dismissed solely on that ground. It is undisputed that Mdm Gong was part of the AMP board of directors from 8 June to 25 November 2015. However, being based in China, I accepted that she did not have intimate knowledge of the actions Dr Goh was taking *vis-à-vis* AMP. Even if she did have some knowledge of the transactions, Mdm Gong may not have understood that these transactions were improper until the release of the FH Report, by which time she was no longer a director. I was also prepared to accept the plaintiff's position that it only came to know of the FH Report and the injunction in Suit 111 sometime in April 2016.

46 In this regard, a delay of about a month from the time of discovery of the FH Report and the freezing injunction in Suit 111 was not too significant and would not in and of itself cause the plaintiff's application for an injunction to be dismissed. I was therefore prepared to grant an injunction against Dr Goh.

Quantum of injunction

47 The issue that remained was the amount to be frozen under the injunction in respect of Dr Goh. The object of a *Mareva* injunction is to ensure that a defendant does not dissipate assets beyond a certain value so as to frustrate a judgment that the plaintiff may obtain against the defendant. If some of the plaintiff's heads of claim are unlikely to result in a judgment for that sum, it would be unfair to the defendant to prevent him from dealing with those amounts. The plaintiff thus needs to show *prima facie* proof that it incurred such loss and show justification for the amount over which it seeks to prevent the defendant from dealing (see *S & F International Ltd v Trans-con Engineering Sdn Bhd* [1985] 1 MLJ 62 ("*Trans-Con*") (cited in the Court of Appeal decision of *Choy Chee Keen Collin v Public Utilities Board* [1996] 3 SLR(R) 812 at [46]) and *Art Trend Ltd v Blue Dolphin (Pte) Ltd and others* [1981-1982] SLR(R) 633 at [8] (upheld on appeal: *Art Trend Ltd v Blue Dolphin (Pte) Ltd and others* [1983-1984] SLR(R) 105)).

48 The reliefs sought by the plaintiff in Suit 1311 are set out in [4] above. In my view, the plaintiff had made out its case for an injunction against Dr Goh in respect of the amount of the Sale Price, stamp duties and foreign exchange loss. I accepted the quantum for the Sale Price and stamp duties as they are clearly indicated in the SPA. I also accepted the plaintiff's explanation that the foreign exchange loss is derived from the change in the RMB to SGD forex rate from the time the Sale Price was transferred to the date of the Statement of Claim (being 31 December 2015) and adopted the currency exchange rates submitted by the plaintiff. In the absence of contemporaneous documents demonstrating that the plaintiff was considering investing in the public funds at the time of the SPA as an alternative investment, I found the plaintiff's claim in respect of the sums it would have earned if it had not purchased AMP's shares

and had invested the monies in a public fund somewhat speculative. I therefore declined to grant an injunction against Dr Goh in respect of those sums.

49 Dr Goh also argued that the plaintiff has security for its claim as it continues to hold shares in AMP. However, as there is little evidence of the current worth of the AMP shares, I did not deduct any sum to take into account the value of the shares.

My decision on the LS Mareva *injunction*

50 I found that the plaintiff demonstrated a good arguable case and a real risk of dissipation of assets vis-à-vis Dr Goh. I therefore granted an injunction against Dr Goh from disposing his assets in Singapore up to the cumulative value of the Sale Price, the stamp duties as well as the pleaded foreign exchange losses.

SUM 1814 — application for discharge of the LS *Mareva* injunction

51 On 13 April 2017, the Court of Appeal discharged a different *Mareva* injunction against Dr Goh in Suit 111. Judgment was given immediately after the parties' submissions and no written grounds of decision have been published. Following this, Dr Goh applied for the LS *Mareva* injunction against him in SUM 2483 to be discharged on the basis that the Court of Appeal's treatment of certain factors should be taken into consideration as a material change in circumstances.

52 Dr Goh argued that the present LS *Mareva* injunction was based on material from Suit 111, particularly the FH report. He submitted that the Court of Appeal's decision to discharge the *Mareva* injunction granted in Suit 111 meant, *inter alia,* that the allegations in the FH Report were rejected as being

sufficient proof of a real risk that Dr Goh and/or Michelle would dissipate assets to frustrate potential judgments against them. He argued that, as a result of this development, the LS *Mareva* injunction, which was based on the FH Report, should be discharged.

53 The plaintiff argued that without the Court of Appeal's written grounds of decision, its full reasons and treatment of the allegations in the FH Report are not known. The plaintiff also highlighted that Dr Goh did not produce any official transcripts or records of the hearing at the Court of Appeal.

54 In SUM 2483, I had found that the plaintiff had established a good arguable case against Dr Goh in its claim for fraudulent misrepresentation. The Court of Appeal's discharge of the *Mareva* injunction in Suit 111 does not have any bearing on this finding. Both parties rightly focused on the question of whether a real risk of dissipation existed at the hearing for SUM 1814.

55 I took the view that there remained a real risk of dissipation on the part of Dr Goh.

56 First, I agreed that the Court of Appeal's finding on certain evidence relied upon by the plaintiff in the present case, such as the FH Report, should be considered and may even be binding on me. However, without written grounds of the decision, I was unable to determine the weight placed by the appellate court on the various issues that were raised in that hearing.

57 Second, I did not think that the FH Report was the sole evidence demonstrating a lack of probity on the part of Dr Goh. Thus, even if (taking Dr Goh's case at its highest) the Court of Appeal placed little weight on the FH Report or found it to be unreliable, this in itself does not inevitably lead to the

conclusion that the LS *Mareva* injunction should be discharged. I reiterate my finding that there is a host of solid evidence in the present suit that demonstrates a lack of probity on the part of Dr Goh in his dealings with this particular plaintiff. These are detailed at [23] to [37] above and also in *LSI v OCBC*. The sum of the evidence in Suit 1311 before me at this interlocutory stage presented a strong *prima facie* case that Dr Goh had acted dishonestly in making the misrepresentations at [3] to the plaintiff. Such dishonesty is relevant to the question of the risk of dissipation of assets. In contrast, Suit 111 was brought by three companies under the AMP Group against, *inter alia*, Dr Goh and Michelle for breach of various employment agreements, breach of directors' duties owed to the plaintiff as well as conspiring by unlawful means to injure the plaintiff.

58 Second, Dr Goh highlighted that his status as a senior medical practitioner was raised before the Court of Appeal and seemed to suggest that this consideration was accorded significant weight by the appellate court. He canvassed the same argument before me that as a senior medical practitioner, he is unlikely to risk bankruptcy in order to frustrate the enforcement of a judgment against him. I appreciated that Dr Goh is a doctor with considerable standing in his field. However, the strength of Dr Goh's status as a senior doctor must be weighed against the whole of the evidence in the particular case before me. For example, hypothetically, if a senior medical doctor is shown to have reached retirement age, has gifted massive sums to his children and has the ability to leave the jurisdiction and set up home elsewhere, such facts will be relevant.

New evidence before me

59 My finding in SUM 2483 that there was a real risk of dissipation on the part of Dr Goh was in fact reinforced by new evidence that arose between the time the LS *Mareva* injunction was granted and the time SUM 1814 was heard.

60 First, Dr Goh has now admitted and has amended his defence to concede that there was in fact no urgent need for the funds as he had sufficient funds to buy out the minority shareholders. The plaintiff had earlier been successful in obtaining a discovery order for Dr Goh to disclose his bank account statements as these were relevant to the alleged misrepresentation that he had insufficient funds to buy out the minority shareholders. At the appeal against that order made by the Assistant Registrar, Registrar's Appeal No 414 of 2016, Dr Goh submitted that the order was no longer necessary as he had since amended his defence and admitted that he had in fact sufficient funds at the material time. I find this to be a significant concession by Dr Goh. If indeed he had made the representation that he needed funds urgently in order to buy out the minority investors who could potentially stifle the trade sale or IPO listing, it would have been false and would show deceptive intention and conduct. I had found a good arguable case that Dr Goh had made those representations. I noted in *LSI v OCBC* (at [31]) that:

> (c) On 24 November 2014 (just prior to the execution of the SPA on 25 November 2014), Dr Goh and Mdm Gong discussed the guarantee over the WhatsApp messaging platform. Dr Goh explained to Mdm Gong that the reason for using AMP to repurchase the shares at a guaranteed price if no IPO or trade sale was concluded after 24 months after the date of the SPA was "because we did not give you sufficient time [and] material for Due Diligence" and that a "quick decision" was required, though it was "not fair for a quick decision based on impulsion and little cognition, thus the 2 years of guarantees [*sic*]". Dr Goh assured Mdm Gong that the "chances are that nobody need[s] to guarantee anything

> once IPO or Trade Sales [*sic*] take place *very soon*" [emphasis added].
>
> (d) Subsequently, on 25 November 2014 (*ie*, the date the SPA was executed), Dr Goh told Mdm Gong to "sign the SPA if [you] can, and i will appreciate if you can tt money to my Bank of Singapore Account asap" as he "[needed] the money to take out immediately the minority shareholders with voting rights".

61 Second, Dr Goh had also admitted in the two hearings before me that the funds from the plaintiff were used to purchase two Sentosa properties, namely The Berth and Seascape properties as well as some yachts. The two Sentosa properties were previously put up as security by Dr Goh in exchange for the discharge of the *Mareva* injunction in Suit 111. The properties are now revealed to have been purchased in his children's names. Dr Goh asserted that they were gifts from him to his two children, Melissa and Jeremy. The plaintiff highlighted to me that the contract for the purchase of The Berth was made one day after Dr Goh entered into the SPA. This is despite Dr Goh allegedly representing to the plaintiff that its funds are urgently needed to buy out the minority shareholders. There is now a clear admission that Dr Goh had used the plaintiff's monies to purchase two properties in the names of his children. I accepted the plaintiff's submission that there is a good arguable case that Dr Goh had received these monies from the plaintiff through deceptive means and have put them into assets in the names of his children so as to shield the assets from the plaintiff's reach.

62 Dr Goh had also told the court that family monies, amounting to S$18m, of which he had a share, have now been given to his son, Jeremy, in return for his agreeing to put up his Sentosa property (which he received as a gift from Dr Goh) as security to discharge the *Mareva* injunction in Suit 111. Dr Goh did not state whether Melissa also similarly received any monies for also putting up her property (which she received as a gift from Dr Goh) as security to discharge the

injunction. Although the appeal against the grant of the *Mareva* injunction in Suit 111 has now been allowed and the charges over the two Sentosa properties have been removed, there was no explanation by Dr Goh as to the status of Jeremy's Sentosa property or the sum of $18m Jeremy received in the bank account, except that they both remain in Jeremy's name.

63 At the hearing before me, counsel for Dr Goh argued that allegations of fraudulent misrepresentation do not give rise to a risk of dissipation, citing the case of *Bouvier* (supra at [8]). I did not find this persuasive. At the time I granted the *Mareva* injunction in SUM 2483, I was of the view that *Bouvier* did not stand for the principle that dishonesty in the form of fraudulent misrepresentations can never give rise to a risk of dissipation. The court in *Bouvier* only made clear that the allegations of dishonesty against the defendant had to have a real and material bearing upon the risk of dissipation. In *Bouvier*, the court found that the alleged dishonesty was not found to be in "the nature of a complex machination or an elaborate scheme" to deceive. Rather, the real issue in *Bouvier* was the legal nature of the relationship between the parties. I had noted at [20] above that a good arguable case of dishonesty may allow the court to infer a real risk of dissipation if it has a real and material bearing on the risk of dissipation on the part of Dr Goh (*Bouvier* at [93] and [94]). In the present case, I found the concessions by Dr Goh to be significant. The new evidence that emerged suggested a deliberate and dishonest representation to the plaintiff of a state of affairs that Dr Goh knew was not true. As such, I found the element of dishonesty in the facts before me to be significant enough to demonstrate a real risk of dissipation of assets.

Conclusion

64 Although the Court of Appeal had lifted the injunction against the same defendant, Dr Goh, in a separate suit, I reached my decision on all relevant facts available in the present application before me. I had before me new admissions and concessions by Dr Goh that further support my earlier finding that there was a real risk that he would dissipate his assets to frustrate the enforcement of a final judgment against him, if any. Having considered these various developments and for the reasons I have set out, I did not find that there was a material change of circumstances justifying the discharge of the LS *Mareva* injunction and dismissed SUM 1814 accordingly.

Costs

65 After hearing the parties' submissions, I ordered for costs to be reserved to the Court of Appeal.

Debbie Ong
Judicial Commissioner

Harpreet Singh Nehal SC, Keith Han, Tan Tian Yi (Cavenagh Law LLP) for the applicant;
Adrian Tan, Kenneth Chua, Goh Chee Hsien Joel, Lim Siok Khoon, Ong Pei Ching, Yeoh Jean Wern, Hari Veluri (Morgan Lewis Stamford LLC) for the respondents.