

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 226

Suit No 89 of 2018
(Summons No 1135 of 2018)

Between

- (1) Tang Ying
- (2) Bai Jiaming
- (3) Liu Jianjian
- (4) Zhong Zijun
- (5) Tan See Hwa
- (6) Chen Jiangnan
- (7) Zhang Haibo

... Plaintiffs

And

- (1) Chen Mingliang
- (2) Niu Liming
- (3) Furong Investments Pte Ltd

... Defendants

GROUND OF DECISION

[Injunctions] — [Mareva injunction]

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Tang Ying and others
v
Chen Mingliang and others

[2018] SGHC 226

High Court — Suit No 89 of 2018 (Summons No 1135 of 2018)
Lai Siu Chiu SJ
9, 10 April 2018

12 October 2018

Lai Siu Chiu SJ:

Introduction

1 In Suit No 89 of 2018, Tang Ying (“the first plaintiff”) and six other individuals (collectively all seven plaintiffs are referred to as “the plaintiffs”) sued Chen Mingliang (“the first defendant”), Niu Liming (“the second defendant”) and a Singapore company Furong Investments Pte Ltd (“Furong”) (collectively “the defendants”) for, *inter alia*, (i) misrepresentation, (ii) breach of fiduciary duties and (iii) conspiracy in relation to certain investments.

2 In Summons No 499 of 2018 (“the injunction application”), the plaintiffs applied to court for a Mareva injunction and ancillary orders, against the first defendant and Furong in the amount of US\$2.44m. The injunction application was heard and granted by this court on 29 January 2018 (this order is referred to as “the injunction order”).

3 On 6 March 2018, by way of Summons No 1135 of 2018 (“the Discharge Application”), the first defendant applied, *inter alia*, to set aside the injunction order and for an inquiry to be held to ascertain whether damages are payable to the first defendant resulting from the granting of the injunction order and, in the alternative, that a variation be granted of the injunction order.

4 The Discharge Application was heard by this court over two days. The injunction was not discharged but varied such that the injunction order granted against the first defendant’s penthouse located at 539 East Coast Road, The Sound, #05-02, Singapore 429069 (“the Sound Property”) was lifted and in its place, the plaintiffs were granted liberty to file a caveat against the Sound Property. The court declined to grant the other prayers sought in the Discharge Application.

5 The first defendant then applied, by way of Summons No 1823 of 2018 (“the Leave Application”), for leave to appeal to the Court of Appeal against this court’s decision in the Discharge Application under s 34(2)(d) of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed). This court heard and granted the Leave Application.

6 Pursuant to the granting of the Leave Application, the first defendant filed his Notice of Appeal (in Civil Appeal No 107 of 2018).

The facts

The plaintiffs’ case

7 The facts set out hereinafter are extracted from the affidavit of the first plaintiff filed on 28 January 2018 (“the first plaintiff’s first affidavit”) in support of the injunction application. All the plaintiffs are mainland Chinese nationals,

except for the fifth plaintiff who is a Malaysian and the sixth plaintiff who is a Singapore citizen.¹ The first plaintiff was a former employee of Furong and is a holder of the bonds specified in [8(c)] below and the beneficial holder of the bonds held in the names of Peng Shengping (“Peng”) and Tang Yizhou (“Tang”) who are her aunt and cousin respectively.² The first plaintiff’s investment was US\$400,000 while Peng’s and Tang’s investments were US\$200,000 and US\$75,000 respectively.³

8 In the first plaintiff’s first affidavit, she deposed as follows:

(a) Furong is a Singapore company with the first and second defendants as the only directors and shareholders with the former holding 75.5% and the latter holding 24.5% of the two million issued shares.⁴ Furong has an associate company incorporated in the British Virgin Islands (“BVI”) called Furong Corpbond II Ltd (“Furong Corpbond”).⁵

(b) The first defendant is a mainland Chinese national while the second defendant was born in China but is now a Singapore citizen.⁶

(c) Furong marketed itself as an investment and finance company and issued several bonds including the following:⁷

(i) the 2.5-year 12% FX Bond;

¹ See the first plaintiff’s first affidavit at pp 44, 183, 226, 260, 298, 336, 365.

² The first plaintiff’s first affidavit at paras 12, 15.

³ The first plaintiff’s first affidavit at para 14.

⁴ The first plaintiff’s first affidavit at paras 4–5.

⁵ The first plaintiff’s first affidavit at para 63.

⁶ See the first plaintiff’s first affidavit at paras 6–7.

⁷ The first plaintiff’s first affidavit at paras 9–10.

- (ii) the 2-year 9.6% FX Bond; and
 - (iii) the 6-month 1.8% FX Bond
- (collectively “the Furong Bonds”).

(d) The first plaintiff found out that a bondholder Chia Yook Chan (“CYC”) attempted but failed to obtain early redemption on US\$400,000 of her US\$1m Furong Bonds investment.⁸ Subsequently, the second defendant confirmed to the first plaintiff that Furong was unable to honour CYC’s early redemption request as Furong had been cheated by its business associate Cheok Vui Huntoon Co Limited (“CVHT”) against which a police report had been lodged and legal advice had been sought for this matter.⁹

(e) At the first plaintiff’s meeting on 4 December 2017 with the second defendant, he confirmed the information in [8(d)] above and requested more time for him and the first defendant to resolve the matter.¹⁰

(f) The first plaintiff was advised that Furong had as assets (i) two receivables of about US\$700,000 and US\$2.3m respectively and (ii) a factory/industrial building in Johor Bahru.¹¹

(g) The first plaintiff’s lawyers sent an email to the second defendant requesting confirmation from him of what he had said to the first

⁸ The first plaintiff’s first affidavit at paras 17–18.

⁹ The first plaintiff’s first affidavit at paras 18, 21(a).

¹⁰ The first plaintiff’s first affidavit at paras 20–21(b).

¹¹ The first plaintiff’s first affidavit at para 21(c).

plaintiff at the 4 December 2017 meeting but he never replied to the email.¹²

(h) The first plaintiff, together with Peng and Tang (see [7] above), were supposed to but did not receive coupon payments on the Furong Bonds.¹³

(i) On 23 January 2018, the first plaintiff's solicitors issued a redemption notice to Furong for all the Furong Bonds she held (together with those held in the names of her aunt and cousin) but there was neither response nor payment from Furong.¹⁴

9 In regard to the plaintiffs' claim based on misrepresentation, the first plaintiff made the following allegations:

(a) When she worked for Furong, she was aware that the company held many seminars at which the second defendant spoke and which were attended by members of the public.¹⁵ The second defendant represented that the Furong Bonds were guaranteed in terms of capital and coupon payments. Similar assurance was given to her and her colleagues at Furong.¹⁶

(b) She and everyone else knew that the first defendant was the majority shareholder of Furong and that the second defendant listened to and acted on the first defendant's instructions.¹⁷

¹² The first plaintiff's first affidavit at paras 22–23.

¹³ See the first plaintiff's first affidavit at paras 24–25.

¹⁴ See the first plaintiff's first affidavit at paras 26–27.

¹⁵ The first plaintiff's first affidavit at para 28.

¹⁶ See the first plaintiff's first affidavit at para 29.

(c) The first and second defendants as Furong’s directors prepared pamphlets/facts sheets on the Furong Bonds and these were handed out to potential investors at seminars and private meetings to entice investors to purchase the Furong Bonds.¹⁸ The material handed to investors represented that all three Furong Bonds in [8(c)] above were capital guaranteed. So too did the information on Furong’s website.¹⁹

10 The first plaintiff subsequently discovered from Furong’s initial Investment Memorandum (“the First Memorandum”) that set out the terms of the Furong Bonds subscription that the representation that the Furong Bonds were capital guaranteed was untrue.²⁰ In fact, a clause in the First Memorandum states:

In the event that CVHT does not make the payments of the Closing Amount, [Furong] will not be obliged to redeem the note. In the event that the Closing Amount is unrecoverable from CVHT by [Furong], [Furong’s] obligation to redeem the Investment Bond shall cease.

(This clause is referred to as “the default clause”).

11 Indeed, Furong’s solicitors’ letter dated 29 November 2017 to CYC (see [8(d)] above) relied on the default clause to deny liability.²¹ Separately, Furong wrote to the fifth plaintiff on 26 December 2017 to deny liability, relying on the default clause.²²

¹⁷ The first plaintiff’s first affidavit at para 30.

¹⁸ The first plaintiff’s first affidavit at para 31.

¹⁹ The first plaintiff’s first affidavit at para 33.

²⁰ See the first plaintiff’s first affidavit at para 35.

²¹ The first plaintiff’s first affidavit at para 36.

²² The first plaintiff’s first affidavit at para 37.

12 The first plaintiff deposed that the plaintiffs would not have purchased the Furong Bonds if the products were not capital guaranteed as she/they wanted a safe investment.²³ In that regard, she had relied on the representations made by the first and second defendants as well as Furong. To market the Furong Bonds, the First Memorandum as well as the first and second defendants represented to the world, *inter alia*, that Furong worked with highly sophisticated and reputable global finance and/or trading houses including CVHT.²⁴ They said CVHT was founded by a group of veteran Wall Street traders and focused mainly on foreign exchange markets in major currencies, including the Euro, the US dollar and the Japanese Yen, globally.²⁵ They further represented that CVHT's Hong Kong office was a one-stop data analysis, wealth management, investment and consultation institute which aimed to generate better potential returns in all market scenarios.

13 After the default in payment by Furong, the first plaintiff instructed her solicitors to look into the audited accounts of Furong.²⁶ She then discovered that Furong was a limited exempt company and did not have to file audited accounts. When her solicitors approached the company's alleged auditors, they were told (in a letter dated 15 January 2018) that the latter were not and had never acted as Furong's auditors.²⁷

14 The first plaintiff deposed that when she obtained a copy of the police report mentioned in [8(d)] above, she found it highly suspicious that the second defendant lodged the police report on 22 November 2017, just two days after

²³ See the first plaintiff's first affidavit at para 39.

²⁴ See the first plaintiff's first affidavit at paras 40, 42.

²⁵ See the first plaintiff's first affidavit at para 41.

²⁶ The first plaintiff's first affidavit at para 47.

²⁷ The first plaintiff's first affidavit at para 48.

CYC submitted her request for early redemption of the Furong Bonds.²⁸ Further, the police report was made five months after CVHT's default in June 2017.²⁹ The first plaintiff believed the delay suggested that the second defendant made the police report only as an afterthought to placate CYC and other Furong bondholders.³⁰

15 Despite knowing of CVHT's default in June 2017, the second defendant, as the first plaintiff alleged, still requested her and other Furong employees to sell the Furong Bonds.³¹ That was why the third and fifth plaintiffs bought Furong's two-year bonds on 5 June 2017 and 8 June 2017 for which the second defendant signed a fund transfer form to CVHT's entity Blackwell Global Investments Limited for the subscription moneys paid by the two plaintiffs.³² Subsequently, the first plaintiff discovered that the bank account to which the second defendant purportedly transferred the third and fifth plaintiffs' subscription moneys was non-existent or fake.

16 The first plaintiff further discovered that Furong and Furong Corpbond (see [8(a)] above) had entered into a loan facility to lend up to \$20m ("the N loan") to a Singapore listed company Nutryfarm International Limited ("Nutryfarm"), according to Nutryfarm's announcement made on 30 October 2017 to Singapore Exchange Securities Trading Limited ("SGX").³³

²⁸ See the first plaintiff's first affidavit at para 54.

²⁹ See the first plaintiff's first affidavit at para 55.

³⁰ See the first plaintiff's first affidavit at para 57.

³¹ The first plaintiff's first affidavit at para 58.

³² See the first plaintiff's first affidavit at paras 58–59.

³³ See the first plaintiff's first affidavit at paras 63–64.

17 When SGX queried Nutryfarm on the N loan, Nutryfarm explained that the sole shareholder of Furong Corpbond is the second defendant while he and the first defendant are directors and the N loan is managed for Furong Corpbond by Furong.³⁴

18 On 7 December 2017, the solicitors of the first defendant with a team of computer forensic specialists seized all the documents, laptops, *etc*, from the office of Furong without notice.³⁵ The first plaintiff was then still an employee of Furong; she alleged she was made to delete all personal data from and surrender her work laptop. The first plaintiff was then asked to leave Furong's office. The second defendant was removed as the chief executive officer of Furong.³⁶ Subsequently, the first plaintiff was told to stop reporting for work and on 15 December 2017, her employment was terminated by Furong along with the employment of other staff of Furong.³⁷ She later discovered that Furong had vacated its office and ceased operations.

19 The first plaintiff deposed the injunction application was prompted by her discovery on 24 January 2018 of advertisements to sell The Sound Property.³⁸ The advertisements were all placed online by a real estate agent called Ginger Jiang.³⁹ The first plaintiff feared that if the first defendant sold The Sound Property, he could easily hide and/or transfer the sale proceeds beyond the reach of the plaintiffs, being a foreigner and a mainland Chinese national.⁴⁰

³⁴ See the first plaintiff's first affidavit at p 459.

³⁵ See the first plaintiff's first affidavit at para 70.

³⁶ The first plaintiff's first affidavit at para 72.

³⁷ The first plaintiff's first affidavit at paras 71, 73.

³⁸ See the first plaintiff's first affidavit at para 82.

³⁹ See the first plaintiff's first affidavit at pp 473–485.

The first defendant's case

20 The first defendant filed the Discharge Application shortly after the injunction order was granted. In support thereof, the first defendant filed an affidavit on 6 March 2018 (“the first defendant’s affidavit”) in which he deposed and/or alleged:

- (a) the first plaintiff and the second defendant used the injunction order for a collateral purpose – as a concerted strategy to (i) distract and obstruct Furong and the first defendant from conducting investigations into their wrongdoings and (ii) deflect their liability onto Furong and him;⁴¹
- (b) the first plaintiff had failed to make full and frank disclosure of material facts in her supporting affidavit for the injunction application, *ie*, the first plaintiff’s first affidavit;⁴²
- (c) there was no arguable case against the first defendant;⁴³ and
- (d) there was no real risk that the first defendant would dissipate his assets.⁴⁴

21 The first defendant elaborated on [20(a)] above as follows:

- (a) The second defendant had filed a winding-up petition against Furong on 28 December 2017 in Companies Winding Up No 265 of

⁴⁰ See the first plaintiff’s first affidavit at para 79.

⁴¹ See the first defendant’s affidavit at paras 5.1, 6.

⁴² The first defendant’s affidavit at para 5.2.

⁴³ See the first defendant’s affidavit at para 5.3.

⁴⁴ See the first defendant’s affidavit at para 5.4.

2017 (“the winding-up proceedings”) and it was followed by the injunction application filed on 28 January 2018.⁴⁵ These were also shortly after the second defendant and the first plaintiff were dismissed by Furong on 7 December 2017 and 15 December 2017 respectively.⁴⁶ The injunction application was also filed after the first defendant filed on 18 January 2018 his application in Summons No 321 of 2018 in the winding-up proceedings for an extension of time to file his response affidavit – he intended to reveal the wrongdoings of the second defendant.

(b) The first defendant questioned why the first plaintiff did not similarly apply for a Mareva injunction against the second defendant who had been running the operations of Furong until his services were terminated on 7 December 2017.⁴⁷ Further, the first plaintiff did not serve the writ of summons on the second defendant until much later; the second defendant only entered an appearance to the writ on 26 February 2018. These acts reinforced the first defendant’s belief that the first plaintiff and the second defendant were acting in concert.

(c) The first plaintiff’s first affidavit contained confidential documents of Furong that should have been returned to the company when her services were terminated.⁴⁸ Since she had signed a turnover form stating that she had no other company documents when she left Furong, the only inference that could be drawn therefrom was that the second defendant must have given the documents to her. This would

⁴⁵ See the first defendant’s affidavit at paras 3, 8.

⁴⁶ The first defendant’s affidavit at para 8.

⁴⁷ See the first defendant’s affidavit at para 9.1.

⁴⁸ See the first defendant’s affidavit at para 9.1.

thus explain her cryptic statement that she “managed to obtain” the documents without further elaborating [original emphasis omitted].

22 The first defendant then elaborated on his contention in [20(b)] above that the first plaintiff had failed to give full and frank disclosure.

23 First, he alleged that the first plaintiff failed to disclose that she herself had made numerous misrepresentations to buyers in regard to the terms of the Furong Bonds, in particular that they were capital guaranteed.⁴⁹ In fact, as the first defendant alleged, that was how the first plaintiff had persuaded the second to sixth plaintiffs who are her friends and/or relatives to buy the bonds.⁵⁰ However, her affidavit was silent on who had made the representations to these six plaintiffs.⁵¹ The first plaintiff also avoided saying who had sold the Furong Bonds to the seventh plaintiff.⁵² The first defendant noted that the first plaintiff had deposed that as Furong’s ex-employee, she had witnessed the company holding seminars and had attended meetings where the second defendant represented that the Furong Bonds were capital guaranteed. However, the second to seventh plaintiffs would not have been privy to those representations unless the first plaintiff or the second defendant repeated them to the former.

24 Second, the first defendant found it incredible the first plaintiff’s claim (see [10] above) that she only discovered after Furong’s default on payment, that the First Memorandum stated the Furong Bonds were not capital guaranteed.⁵³ The first defendant pointed out that as an employee who had sold

⁴⁹ See the first defendant’s affidavit at para 12.

⁵⁰ See the first defendant’s affidavit at paras 14, 18.

⁵¹ See the first defendant’s affidavit at para 15.

⁵² See the first defendant’s affidavit at para 14.

⁵³ See the first defendant’s affidavit at paras 16–17.

the Furong Bonds, the first plaintiff ought to have read the terms of the First Memorandum. In fact, the first plaintiff had witnessed the declarations made by the second, third and fourth plaintiffs that the First Memorandum had been explained and furnished to them.

25 Third, the first plaintiff failed to disclose that she, together with the second defendant and other employees, had amended the First Memorandum and facts sheets of Furong without the first defendant's knowledge or approval and against the advice of Furong's then lawyers Continental Law LLP ("Continental").⁵⁴ Continental had specifically advised that the amended Memorandum ("the First Amended Memorandum") and facts sheets that contained the capital guarantee provisions should not be used yet as they appeared inconsistent with the First Memorandum and Furong might not have the resources to bear the liability of a guarantee.⁵⁵ The first defendant alleged that the actions of the first plaintiff and the second defendant were intended to cover their tracks so that the documentation would be consistent with their misrepresentations.⁵⁶ The first defendant only discovered the duo's misdeeds in late November 2017.⁵⁷

26 The first defendant deposed that the first round of unauthorised revisions to the First Memorandum and unauthorised representations in the facts sheets took place between April 2016 and September 2016;⁵⁸ the second defendant and Furong employees unilaterally effected the First Amended Memorandum in or around April/May 2016.⁵⁹ The first plaintiff was also involved in the creation of

⁵⁴ See the first defendant's affidavit at para 24.

⁵⁵ See the first defendant's affidavit at para 25.5.

⁵⁶ See the first defendant's affidavit at para 21.

⁵⁷ See the first defendant's affidavit at para 23.

⁵⁸ See the first defendant's affidavit at paras 24–25.

the contents on Furong's website which represented that the Furong Bonds were capital guaranteed.⁶⁰

27 The first defendant also disclosed that he was informed by the chief executive officer of CVHT namely Lee Yung-Ho ("Lee") that the second defendant had transferred US\$1.77m of Furong's funds that were invested in CVHT to five accounts opened under the second defendant's personal name.⁶¹ Further, when Furong's initial investment in CVHT following the first investment agreement entered into in October 2015 ("Furong's First Investment Agreement") sustained losses, the second defendant told Lee to hide them from the first defendant.⁶²

28 As exhibited in the first defendant's affidavit, Lee made a statutory declaration on 9 February 2018 ("Lee's statutory declaration") (at exhibit tab 7A in the first defendant's affidavit).⁶³ According to Lee's statutory declaration, Furong entered into a second investment agreement with CVHT in August 2016 through the second defendant.⁶⁴ The second defendant had asked Lee for a 'cut' from the 10% interest that was originally paid to Furong under Furong's First Investment Agreement. Lee agreed and paid the second defendant 2.5% of the 10% interest ("the Secret Profit Agreement"). Lee claimed that after the second defendant pressed him, he paid the second defendant US\$27,000 in March 2017 under the Secret Profit Agreement.⁶⁵

⁵⁹ See the first defendant's affidavit at para 25.8.

⁶⁰ See the first defendant's affidavit at para 25.10.

⁶¹ See the first defendant's affidavit at para 10.7, p 90.

⁶² See the first defendant's affidavit at pp 89–90.

⁶³ See the first defendant's affidavit at pp 88–120.

⁶⁴ See the first defendant's affidavit at p 89.

⁶⁵ See the first defendant's affidavit at pp 90–91.

29 The first defendant surmised (relying on the defence filed in these proceedings on 29 March 2018 by the second defendant (“the second defendant’s defence”)) that the first plaintiff, as part of her duties to monitor the trading activities of Furong’s investment with CVHT,⁶⁶ would have known of the second defendant’s trading activities with CVHT.

30 The first defendant deposed that he discovered that in October 2016, the second defendant had approached another law firm (“ELC”) for assistance on a second round of unauthorised revisions to the First Memorandum (“the Second Amended Memorandum”) to enable the terms of the Furong Bonds to “catch up” with the misrepresentations stated in the (revised) fact sheets.⁶⁷ The first defendant opined it was highly suspicious of the second defendant not to go to Continental to draft the second round of revisions, unless he had something to hide. Thereafter the first plaintiff and other employees of Furong proceeded to sell the bonds based on the Second Amended Memorandum prepared by ELC.⁶⁸

31 The first defendant disclosed that the first plaintiff stood to gain if the Furong Bonds were/are capital guaranteed – the bonds would be more attractive to potential investors.⁶⁹ The first plaintiff could also earn more commission and bonuses in selling the bonds. The first defendant revealed that in 2017, the first plaintiff earned \$34,011.55 in commission and another \$14,788.98 in bonuses on top of her monthly salary of \$5,000 (which was increased to \$5,500 in May 2017). She also stood to gain personally from her own investment if the Furong Bonds were capital guaranteed.

⁶⁶ See the second defendant’s defence at para 27(b).

⁶⁷ See the first defendant’s affidavit at para 26.

⁶⁸ See the first defendant’s affidavit at para 27.

⁶⁹ See the first defendant’s affidavit at para 30.

32 The first defendant alleged that the first plaintiff had failed to inform the court that none of the bonds purchased by the plaintiffs had reached maturity yet or that the Second Amended Memorandum with the capital guarantee clause (cl 1) did not apply to the majority of the Furong Bonds purchased by the plaintiffs, but only to US\$900,000 of them.⁷⁰ This can be seen in the table below:

Name	Date of investment	Sum invested (US\$)	Clause 1 present?
Tang*	27/7/16	75,000	No
6th plaintiff	26/8/16	65,000	No
Peng*	26/8/16	200,000	No
7th plaintiff	10/11/16	1,000,000	No
1st plaintiff	23/11/16	200,000	No
1st plaintiff	28/12/16	200,000	Yes
2nd plaintiff	6/4/17	200,000	Yes
4th plaintiff	2/2/17	200,000	Yes
3rd plaintiff	5/6/17	200,000	Yes
5th plaintiff	8/6/17	100,000	Yes

* Beneficially owned by the first plaintiff.

33 The first defendant alleged that the first plaintiff had failed to inform the court that all three Memoranda (*ie*, the First Memorandum, the First Amended Memorandum and the Second Amended Memorandum) contained the following non-reliance clause:⁷¹

⁷⁰ See the first defendant's affidavit at para 33.

⁷¹ See the first defendant's affidavit at para 34; see, *eg*, the first plaintiff's first affidavit at pp 51, 86.

No person has been authorized to give any information or to make any representations other than those contained in this Memorandum in connection with the issue or sale of the Investment Bonds and, if given or made, such information or representations must not be relied upon as having been authorized by the Company, the Investment Manager or any other person.

He asserted that the above clause was fatal to the plaintiffs' case based on misrepresentation.

34 The first defendant added that the first plaintiff had also failed to inform the court that the Furong Bonds held by her nominee Tang and the sixth plaintiff received interest at 2.2% per quarter instead of 1.8% per six months as stipulated under the terms of those bonds.⁷² In this regard, the sixth plaintiff had received in interest US\$5,720 to date while the first plaintiff as the beneficial owner of the bonds held by Tang received interest totalling US\$6,600. The first plaintiff was also paid commission of US\$1,010 for the bonds sold to the sixth plaintiff and Tang even though the first plaintiff beneficially owned the latter's bonds.

35 The first defendant further questioned the quantity (US\$65,000) of the bonds sold to the sixth plaintiff by the first plaintiff as well as those (US\$75,000) bought by her nominee Tang and by the fifth plaintiff (US\$100,000) (see [32] above).⁷³ All three Memoranda clearly stated that the bonds must be bought for not less than US\$200,000 each.

36 The first defendant accused the first plaintiff of lying in her claim that she was shocked when she discovered that Furong and Furong Corpbond had advanced the N loan to Nutryfarm.⁷⁴ He alleged that she was fully aware of the

⁷² See the first defendant's affidavit at paras 35–36.

⁷³ See the first defendant's affidavit at para 38.

⁷⁴ See the first defendant's affidavit at paras 39–40.

N loan from as early as August 2017 and in fact was selling bonds for Furong to raise funds for the same including liaising with one Mo Huan Sheng on his \$2.5m investment in Furong's 4-year 2.3% Corporate Bond II.⁷⁵ The first defendant stated he was not involved in Furong Corpbond.⁷⁶

37 The first defendant deposed that there was no real risk of his dissipating his assets in any case. He pointed out that he had personally injected cash into Furong over the years and received in return only director's fees of \$10,000 per month; Furong owes him a sum in excess of \$9m.⁷⁷ He continued to advance moneys to Furong including S\$300,000 and US\$50,000 in October/November 2017 to ensure interest payments could still be made to investors.⁷⁸ He also funded the company's legal fees.

38 The first defendant questioned why the first plaintiff failed to inform the court that he had been looking to sell the Sound Property in order to find and move to another property, closer to his son's school.⁷⁹ Neither did the first plaintiff disclose that the first defendant is a permanent resident of Singapore. The first defendant referred to copies of advertisements advertising the sale of the Sound Property exhibited in the first plaintiff's first affidavit (see [19] above) but which did not result in any firm offers until 27 January 2018.⁸⁰

39 The first defendant's claim in this regard was supported by an affidavit filed by one Jiang Nina ("Jiang"), a sales director from Utopia Properties Pte

⁷⁵ See also the first defendant's affidavit at para 40.4.

⁷⁶ See the first defendant's affidavit at para 41.

⁷⁷ See the first defendant's affidavit at para 49.

⁷⁸ See the first defendant's affidavit at para 50.

⁷⁹ See the first defendant's affidavit at paras 52, 54.

⁸⁰ See the first defendant's affidavit at paras 55–56; the first plaintiff's first affidavit at pp 473–485.

Ltd, who deposed that she brought the first defendant to see various condominium units and landed properties in the Serangoon/Kovan area nearer to his son's school either to buy or to rent a property but the first defendant found nothing suitable.⁸¹ (Jiang is also known as "Ginger Jiang" (see [19] above).) Jiang further confirmed that it was on 27 January 2018 that she told the first defendant that a buyer had offered \$2,308,500 for the Sound Property which offer the first defendant rejected in part for being too low.⁸²

The reply affidavits

40 In the first plaintiff's affidavit filed on 26 March 2018 ("the first plaintiff's reply affidavit") to resist the Discharge Application, she denied she was acting in concert with the second defendant (or anyone else) to stop the first defendant from conducting further investigations into Furong's affairs.⁸³ She claimed that the plaintiffs were unaware of the winding-up proceedings before they were commenced and she only learnt of those proceedings just before the injunction application was filed.⁸⁴

41 The first plaintiff explained that she did not file an injunction application against the second defendant because the plaintiffs did not have evidence that showed there was a risk that he was dissipating his assets.⁸⁵

42 Although the first plaintiff reported to the second defendant at Furong, she alleged that the first defendant was the 'big boss' to whom the second defendant reported because the first defendant was the majority shareholder.⁸⁶

⁸¹ Jiang's affidavit filed on 6 March 2018 at paras 1, 3.

⁸² Jiang's affidavit filed on 6 March 2018 at para 5.

⁸³ The first plaintiff's reply affidavit at para 4.

⁸⁴ The first plaintiff's reply affidavit at para 7.

⁸⁵ The first plaintiff's reply affidavit at para 10.

All payments made by Furong however small had to be approved by the first defendant and his signature was required on all of Furong's cheques.⁸⁷

43 The first plaintiff added that CVHT was the first defendant's business contact and it was he who brought CVHT/Lee to the table to negotiate with Furong.⁸⁸ In that regard, she had met Lee at least once. Lee had told her and other employees of Furong that they should be confident of selling the Furong Bonds because the first defendant was a man of substantial means and he was their boss. Hence, it did not lie in the first defendant's mouth to say that he did not authorise and did not know (i) the contents of the facts sheets in relation to the Furong Bonds that stated the bonds were capital guaranteed; (ii) the representations that the Furong Bonds were capital guaranteed were on Furong's website; and (iii) the contents of the Memoranda given to and accepted by Furong's customers.⁸⁹ The Furong Bonds were sold to the public in Singapore for about a year at least and the first plaintiff found it inconceivable that the first defendant, as a director of Furong, did not know of and did not authorise the statements that the Furong Bonds were capital guaranteed.⁹⁰

44 The first plaintiff noted that the first defendant was able to procure Lee's statutory declaration (see [28] above) in Singapore despite CVHT having defrauded Furong.⁹¹ She questioned why neither Furong nor the first defendant had taken legal action against CVHT, after lodging (late) a police report.⁹²

⁸⁶ The first plaintiff's reply affidavit at para 12(a).

⁸⁷ The first plaintiff's reply affidavit at para 12(b).

⁸⁸ The first plaintiff's reply affidavit at para 12(c).

⁸⁹ The first plaintiff's reply affidavit at para 13.

⁹⁰ The first plaintiff's reply affidavit at para 14.

⁹¹ The first plaintiff's reply affidavit at para 19.

⁹² See the first plaintiff's reply affidavit at paras 16, 18.

45 The first plaintiff denied she had made secret profits in selling the Furong Bonds, other than receiving her commission and salary from Furong.⁹³ She explained that she could not have had a hand in altering the terms of the Furong Bonds when she herself lost US\$400,000 of her own money.

46 The first plaintiff further denied she had made unauthorised amendments to any of the Memoranda as she had no say in their contents.⁹⁴ At most, she helped to translate or check the translation of the Chinese portions of the documents. She deposed that at all times she acted on the second defendant's instructions which she believed the first defendant sanctioned.

47 As for Nutryfarm, she disclaimed involvement in the N loan although she had heard about it.⁹⁵ She did not know the first and second defendants would incorporate Furong Corpbond to make the N loan to Nutryfarm. She was shocked as it meant the first and second defendants were effectively 'ring-fencing' Furong's assets.

48 The first plaintiff disclosed that assets-wise, neither the first defendant nor Furong would likely have sufficient assets to satisfy a judgment against them, pointing out that Furong had less than \$100,000 in cash while the first defendant only had about \$98,956.12 in his Singapore bank accounts and a net value (less mortgage loan outstanding) of \$942,033.01 for the Sound Property.⁹⁶ The plaintiffs on the other hand had invested US\$2.44m in the Furong Bonds.

⁹³ The first plaintiff's reply affidavit at para 21.

⁹⁴ The first plaintiff's reply affidavit at para 25.

⁹⁵ The first plaintiff's reply affidavit at paras 26–27.

⁹⁶ See the first plaintiff's reply affidavit at paras 26–27.

49 In the first defendant's affidavit filed on 3 April 2018 ("the first defendant's reply affidavit"), he not surprisingly denied the first plaintiff's allegations. He asserted there was no real risk of dissipation of his assets and that the first plaintiff was giving the excuse that she could not have known that he had been attempting to sell the Sound Property since September 2017 with a view to move to a property nearer to his son's school.⁹⁷

50 The first defendant noted that in the second defendant's defence (at paras 12(d), 21), the latter had identified the first plaintiff as one of the persons who helped to structure, prepare and finalise the facts sheets and the Memoranda.⁹⁸

51 Contrary to the first plaintiff's allegation that the first defendant took no action to recover from CVHT the losses on Furong's investment, he deposed that after he found out about the losses in June 2017, he engaged solicitors in Hong Kong and Singapore in August 2017 and chased Lee for payment of the losses Lee had promised to meet in his message dated 25 June 2017.⁹⁹ CVHT in fact did make one payment of US\$25,000 on 31 July 2017. However, Furong's Hong Kong solicitors raised issues of recoverability given that CVHT and Lee had no known assets.¹⁰⁰ The first defendant deposed that it was only when it was apparent that no further payments were forthcoming from Lee/CVHT that he requested the second defendant to lodge a police report in November 2017.

52 The first defendant noted that the first plaintiff had changed her tune. From claiming in the first plaintiff's first affidavit that she was shocked to

⁹⁷ See the first defendant's reply affidavit at paras 4–5.

⁹⁸ See the first defendant's reply affidavit at para 12.

⁹⁹ See the first defendant's reply affidavit at para 15.

¹⁰⁰ The first defendant's reply affidavit at para 16.

discover about the N loan to Nutryfarm, she had in the first plaintiff's reply affidavit claimed that she knew about the N loan but not that another BVI company Furong Corpbond would be incorporated.¹⁰¹ He said that was a lie as the first plaintiff was intimately involved together with the second defendant in putting together the documentation to be signed by Furong Corpbond.¹⁰² He pointed out that he was/is not a director of Furong Corpbond.¹⁰³

The arguments

The first defendant's case

53 Aside from the affidavits filed by the parties, lengthy arguments were raised at the hearing especially on behalf of the first defendant.

54 In support of the argument that the injunction order was brought for a collateral purpose (allegedly to bring the first defendant to his knees) and therefore ought to be discharged, counsel for the first defendant cited *Art Trend Ltd v Blue Dolphin (Pte) Ltd and others* [1981–1982] SLR(R) 633 and *Bouvier, Yves Charles Edgar and another v Accent Delight International Ltd and another and another appeal* [2015] 5 SLR 558.¹⁰⁴

55 It was submitted that the sequence of events outlined in the first defendant's affidavit revealed that the true aim of the injunction was to ensure that Furong and the first defendant did not have ready access to funds necessary to finance the investigations into the wrongdoings of the first plaintiff and the second defendant while they were with Furong.¹⁰⁵ For that reason, the plaintiffs

¹⁰¹ The first defendant's reply affidavit at paras 17–18.

¹⁰² See also the first defendant's reply affidavit at para 19.

¹⁰³ The first defendant's reply affidavit at para 21.

¹⁰⁴ The first defendant's submissions at para 4.

restricted the injunction order to the first defendant and Furong notwithstanding the clear incriminating evidence against the second defendant.¹⁰⁶ That was also the reason why the second defendant filed the winding-up proceedings.¹⁰⁷

56 The first defendant contended that the ongoing investigations he initiated after the second defendant's dismissal uncovered the latter's scheme (in which the first plaintiff was involved) of a wide-ranging marketing plan to illegitimately boost the sales of the Furong Bonds by misrepresenting that the bonds were capital guaranteed and came with guaranteed coupon payouts.¹⁰⁸ The duo even made sure that the misrepresentations could not be dismissed as mere sales "puff" by enshrining them in various publicity materials (including pamphlets, facts sheets and Furong's official website). Further, between April 2016 and January 2017, they unilaterally amended the contractual terms of the Furong Bonds that had been previously drafted by Furong's solicitors and approved by the board of directors around 12 December 2015. Indeed, they made extravagant promises on behalf of Furong which (i) the board of directors did not authorise and (ii) were contrary to legal advice from Furong's lawyers Continental and (iii) contrary to the actual terms of the Furong Bonds, in particular the default clause (see [10] above) and the non-reliance clause (see [33] above).¹⁰⁹

57 The first defendant referred to the default clause. He explained that the "Closing Amount" was defined in Section I para 1 of the unauthorised Amended Memoranda as "the amounts payable upon the redemption or

¹⁰⁵ The first defendant's submissions at para 7(a).

¹⁰⁶ The first defendant's submissions at paras 7(b), 44.

¹⁰⁷ The first defendant's submissions at para 25.

¹⁰⁸ The first defendant's submissions at para 12.

¹⁰⁹ The first defendant's submissions at para 13.

termination of the Investment Bonds pursuant to Paragraphs 8.4 and 8.5 of Section IV, respectively”.¹¹⁰ If the “Closing Amounts” are not recovered from CVHT, Furong’s obligation to redeem the Furong Bonds ceases.¹¹¹ He submitted this was fatal to the plaintiffs’ contention that they had a good arguable case.

58 The first defendant opined that it was both misleading and ironic that the first plaintiff was relying on the unauthorised Amended Memoranda in which she had a hand in producing to found her claim in misrepresentation against Furong and the first defendant.¹¹²

59 The first defendant noted that the second defendant did not deny that the five trading accounts (see [27] above) were opened in his name.¹¹³ The first defendant submitted there was a real risk that the second defendant would dissipate the moneys from the Furong Bonds that had been diverted to those five accounts.¹¹⁴

60 It was also submitted that the unauthorised Amended Memoranda were never sent to the first defendant for his approval.¹¹⁵ He was not copied in the emails wherein the second defendant and Furong employees were making the unauthorised amendments to the contractual documents and promotional materials.¹¹⁶ The second defendant’s claims that the first defendant was kept

¹¹⁰ The first defendant’s submissions at para 16; see, *eg*, the first plaintiff’s first affidavit at p 53.

¹¹¹ The first defendant’s submissions at para 17.

¹¹² The first defendant’s submissions at para 18.

¹¹³ The first defendant’s submissions at para 20.

¹¹⁴ The first defendant’s submissions at paras 21, 40.

¹¹⁵ The first defendant’s submissions at para 14.

¹¹⁶ The first defendant’s submissions at para 92.

informed by telephone calls and WeChat conversations were not substantiated by any evidence – because no such conversations took place.¹¹⁷ The first defendant pointed out that the first plaintiff failed to disclose that he had never met any of the plaintiffs until well after they had purchased the Furong Bonds.¹¹⁸ In fact, he met the first plaintiff for the first time on 29 November 2017 and later on 7 December 2017 whilst the first and only time he met the seventh plaintiff was in May 2017.

61 The first defendant argued that there was no urgency in applying for the injunction order as the first plaintiff’s first affidavit in which she deposed that her application was prompted by “the sudden closure of ... Furong’s Office and also, [the first defendant’s] sudden decision to sell [the Sound Property]” was proved to be untrue.¹¹⁹

62 The first defendant cited *Meespierson NV v Industrial and Commercial Bank of Vietnam* [1998] 1 SLR(R) 287 to contend that a Mareva injunction should not be used to obtain security for a plaintiff’s claim unless there was a real risk of the defendant dissipating his assets in order to avoid satisfying any judgment which the plaintiff might eventually obtain.¹²⁰ “There must be some ‘solid evidence’ to substantiate the alleged risk” (*per* Chao Hick Tin JA in *Guan Chong Cocoa Manufacturer Sdn Bhd v Pratiwi Shipping SA* [2003] 1 SLR(R) 157 at [18]).¹²¹ Indeed, the Court of Appeal in *Choy Chee Keen Collin v Public Utilities Board* [1996] 3 SLR(R) 812 at [24] held it was an abuse of process to use a Mareva injunction to obtain security for a claim.¹²²

¹¹⁷ The first defendant’s submissions at para 14.

¹¹⁸ The first defendant’s submissions at para 90.

¹¹⁹ See the first defendant’s submissions at paras 27–30.

¹²⁰ See the first defendant’s submissions at para 47.

¹²¹ See the first defendant’s submissions at para 5(a).

63 In lieu of discharging the injunction and to allay the first plaintiff's fears, the first defendant submitted that he was prepared to have the Mareva injunction varied such that he could not dispose of the Sound Property without giving seven days' advance notice to the plaintiffs.¹²³

The plaintiffs' case

64 Not surprisingly, the first plaintiff submitted arguments which were contrary to the first defendant's submissions. It serves little purpose to rehash those arguments as they were diametrically opposite to what the first defendant stated in his two affidavits and in his counsel's submissions.

The decision

65 As the plaintiffs themselves submitted (at para 49 of their submissions), "there is more than meets the eye as to the true account behind the whereabouts of the Plaintiffs' monies". The court had, at the conclusion of the hearing of the Discharge Application, said to counsel that based on the affidavits, it was impossible for the court to determine who was speaking the truth and who was being scammed.

66 However, what was clear to the court was the fact that neither side could claim to be the innocent party in the entire scheme of things. This observation will be elaborated upon below.

67 First, the court was sceptical of the first plaintiff's claim that as an employee of Furong at the material time (who claimed she took instructions

¹²² See the first defendant's submissions at para 46.

¹²³ See the first defendant's submissions at para 99.

from the second defendant), she did not know whether any of the Furong Bonds were/were not capital guaranteed. Her professed ignorance defied belief.

68 If indeed the first plaintiff was a party to the misrepresentation (that the Furong Bonds were capital guaranteed when they were not) and/or she had a hand in the unauthorised Amended Memoranda that stated the Furong Bonds were capital guaranteed, there was no question that the injunction order should be discharged. Injunctive relief is an equitable remedy and should be/would be denied to the first plaintiff if she did not come to court with “clean” hands.

69 However, there was a factor in this case which the first defendant overlooked altogether in his submissions. Assuming *arguendo* that the first plaintiff came to court without “clean” hands, that only meant that the court should deny her the injunction. Looking at the table set out earlier at [32] above, the first plaintiff held US\$400,000 bonds in her own name. She beneficially owned the bonds (US\$75,000) held in Tang’s name as well as the US\$200,000 bonds held in the name of her aunt Peng. That meant US\$675,000 bonds should be deducted from the injuncted sum of US\$2.44m leaving a balance of US\$1,765,000 as the claims of the second to seventh plaintiffs.

70 As counsel for the plaintiffs pointed out in his submissions, what about the claims of the second to seventh plaintiffs? Were they to be denied interim injunctive relief just because the first plaintiff’s hands were tainted? The first plaintiff’s first affidavit was affirmed on her own behalf as well as on behalf of the six other plaintiffs. Even if she was not entitled to an injunction, there was no reason to tar the other plaintiffs with her brush. Why should the first plaintiff’s sin of commission and/or omission be visited on the six other plaintiffs? Nothing in the affidavits filed by the first defendant raised one iota of complaint and/or criticism against those persons. It would be unfair and

inequitable for the court to deny the six plaintiffs an injunction if it was justified, merely because of the first plaintiff's conduct.

71 Was it wrong of the court to have exercised its discretion in favour of the plaintiffs? To answer that question the court turned to certain disquieting aspects it had noted in the affidavits filed for the injunction application as well as for the Discharge Application.

72 The first defendant had repeatedly claimed that he left the running of Furong to the second defendant who left him in the dark as to what transpired in the company. The first defendant's professed ignorance must be seen in the light of the following facts:

(a) Furong's fact sheet (exhibited at pp 411–414 of the first plaintiff's first affidavit) referred to Furong's 2-year 9.6% FX Bond that was released to the general public. The fact sheet clearly stated this bond was capital guaranteed. It was hard to believe that the first defendant would not be aware of such a fact sheet where similar information was posted on Furong's website too.¹²⁴

(b) The first defendant's claim that the second defendant with the assistance of the first plaintiff had made unauthorised amendments to the First Memorandum must be seen in the light of the fact that although the email from Continental dated 26 April 2016 to Furong advised against the use of the capital guarantee provision (due to Furong's possible inability to honour the guarantee),¹²⁵ Continental did not make any comment or advise against the use of the following cl 3 (as part of

¹²⁴ The first plaintiff's first affidavit at pp 424–425.

¹²⁵ The first defendant's affidavit at para 25.5.1.

tracked changes forwarded by Continental to Furong for approval in Furong's revised fact sheet):¹²⁶

3. Safe

Investors can enjoy a peace of mind with guaranteed capital and returns upon maturity. As the funds mainly aims to generate returns from Foreign exchange spread and commission earnings, the majority of invested capital will not be subjected to market/foreign exchange risk.

There was no evidence that the first plaintiff (or the second defendant) had anything to do with the amendments proposed by Continental. Emails between 27 April 2016 and 3 May 2016 exchanged between Damien Chin the then manager of Furong and the printers DL Ideas Pte Ltd showed that neither the first plaintiff nor the second defendant was responsible for the printing of the fact sheet that was revised by Continental.¹²⁷

(c) The first defendant's disclaimer of involvement in Furong Corpbond (see [52] above) was untrue as he gave his consent to act as one of its two directors (the other director being the second defendant) and he also signed the form for Furong Corpbond to open an account with The Central Depository (Pte) Limited.¹²⁸ The fact that he may have requested the second defendant to remove his name subsequently does not detract from the fact that he was very much aware of Furong Corpbond's existence and that Furong was involved with Furong Corpbond.

¹²⁶ See the first defendant's affidavit at pp 349, 359.

¹²⁷ See the first defendant's affidavit at pp 372–377.

¹²⁸ See the second defendant's affidavit filed on 29 March 2018 in the winding-up proceedings at pp 208–209.

73 What the court found highly suspicious was the first defendant's contention that he had taken action against CVHT and Lee for Furong's losses caused by CVHT. According to the first defendant (see [51] above), he had consulted Hong Kong solicitors by early August 2017 once he learnt of the losses in June 2017. In the first plaintiff's reply affidavit, she had exhibited (at TY-18) a copy of the solicitors' bill from King & Wood Mallesons ("KWM") dated 6 February 2018 for services rendered to Furong between 24 November 2017 and 26 January 2018.¹²⁹ Item 8 of the bill's breakdown showed that the solicitor(s) accompanied the client to Wan Chai police station on or about 1 December 2017. KWM's *entire* services related to the making of the police report, nothing more. No civil proceedings were commenced against CVHT in Hong Kong.

74 The Wan Chai police report (at tab 10 of the first defendant's affidavit) made on 22 November 2017 was barely legible. The bill of KWM referred to accompanying the client to the police station on or about 1 December 2017. That must be a reference to the date when a supplemental police report was made by the second defendant (according to the first defendant's affidavit). In the second defendant's affidavit (at pp 333–334) filed on 29 March 2018 in the winding-up proceedings ("the winding-up affidavit"), it was noted that the Wan Chai police authorities (via email) had on 23 January 2018 requested of the second defendant to get the first defendant to sign a police report without which police investigations could not commence. The request was ignored by the first defendant. Hence, nothing came out of the police report(s) that the first defendant deposed he had requested the second defendant to lodge in Hong Kong.

¹²⁹ See the first plaintiff's reply affidavit at pp 28–31.

75 I should add that the first defendant's reply affidavit stated that a Hong Kong firm Oldham, Li & Nie Lawyers ("OLN") was initially consulted;¹³⁰ that statement is neither here nor there. He had exhibited to that reply affidavit a letter from OLN dated 10 August 2017 addressed to Furong.¹³¹ It was not countersigned to confirm OLN's services had even been accepted while its bill was totally redacted – the court had no clue what services if any were provided by OLN and if they related to CVHT, what was the nature/scope of those services.¹³² Similarly, the Warrant to Act of Ho & Wee LLP (the alleged Singapore solicitors) exhibited in the same affidavit was not even *dated let alone signed*.¹³³ Closer scrutiny of those exhibits showed they did not bear out what the first defendant's reply affidavit claimed at para 15.

76 As the first plaintiff said, it was strange that the first defendant could procure Lee's statutory declaration *in Singapore* on 9 February 2018 (see [28] above) after Furong had presumably made a complaint against Lee in Taiwan. (Lee's statutory declaration gave a Taiwanese address.) The Taiwanese authorities appeared to have issued a criminal summons requiring Lee to attend at a police station on 22 June 2016 (exhibited at p 8 of Khoo Shuzhen Jolyn's affidavit filed on 4 April 2018). The court found it suspicious that Lee would be so co-operative with the first defendant when possible criminal proceedings in Taiwan were hanging over Lee's head.

77 Even more perplexing was the fact that Lee had admitted his wrongdoing/responsibility in a WeChat message to the first and second defendants and a third person on 25 June 2017 (at p 35 of the first defendant's

¹³⁰ First defendant's reply affidavit at para 15.2.

¹³¹ See first defendant's reply affidavit at p 38.

¹³² See first defendant's reply affidavit at p 42.

¹³³ See first defendant's reply affidavit at para 15.4, p 45.

reply affidavit). It was (in the words of counsel for the plaintiffs) “an unequivocal admission of liability”. Yet, neither the first defendant nor the Furong have to date taken action and/or proceedings to recover Furong’s losses from CVHT and/or Lee. Such inaction lent credence to the allegation by the second defendant in para 86 of the winding-up affidavit that the first defendant and Lee were in collusion with one another.

Conclusion

78 This was a case where the court had to apply the classic “balance of convenience” test laid down by the UK House of Lords in *American Cyanamid Co v Ethicon Ltd* [1975] AC 396 (“*American Cyanamid*.”).

79 Undoubtedly, the second test in *American Cyanamid* was satisfied in this case – there was indeed a serious question to be tried. On the one hand, the plaintiffs’ statement of claim accused the defendants of making misrepresentations, breaching their fiduciary duties and conspiring to injure the plaintiffs by unlawful means. On the other hand, in the separate defences filed by the first defendant and Furong, they pushed the blame for the default on the Furong Bonds to the second defendant and the first plaintiff, contending that there was no case against them for misrepresentation or breach of fiduciary duties. Furong also filed a counterclaim against the first plaintiff and the second defendant.

80 The second defendant’s defence generally denied he had made any misrepresentations or breached his fiduciary duties to Furong or that he had conspired to injure the plaintiffs, raising again a serious question to be tried.

81 Applying the balance of convenience test, the court did not discharge but varied the injunction order such that the injunction order granted against the

Sound Property was lifted. In its place, the court granted the plaintiffs leave to lodge a caveat against the Sound Property instead of accepting the first defendant's offer (see [63] above) to inform the plaintiffs with seven days' advance notice should he dispose of the Sound Property. In view of the questionable nature (see [72]–[77] above) of some of the actions of the first defendant and/or of some documents and/or events that transpired, the court was wary of accepting the first defendant's word. A caveat lodged by the plaintiffs would undoubtedly alert them should the first defendant sell the Sound Property.

82 If the second to seventh plaintiffs were not allowed to file the caveat in place of the injunction the court lifted, grave injustice may be caused to them, as they were not party to any of the egregious actions (if true) that the first defendant had levelled against the first plaintiff. The first defendant would have dissipated all the assets within jurisdiction if he sold the Sound Property without the plaintiffs' knowledge. The court was of the view that varying the injunction order by replacing the injunction in respect of the Sound Property with a caveat would result in the lowest risk of injustice to all parties concerned.

Lai Siu Chiu
Senior Judge

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