IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 07

Suit No 310 of 2018
(Summons No 4746 of 2019)

Between

Sumifru Singapore Pte Ltd

… *Plaintiff*

And

(1) Felix Santos Ishizuka
(2) Multiport Maritime Corporation
(3) Multiport Maritime Pte Ltd

… *Defendants*

JUDGMENT

[Civil Procedure] — [Mareva injunctions] — [Variation]

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Sumifru Singapore Pte Ltd
v
Felix Santos Ishizuka and others

[2020] SGHC 07

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Vincent Hoong J
24 September, 29 November 2019

10 January 2020 Judgment reserved.

Vincent Hoong J:

Introduction

1 Mareva injunctions have been described as "nuclear weapons" of civil litigation (*Bouvier, Yves Charles Edgar and another v Accent Delight International Ltd and another and another appeal* [2015] 5 SLR 558 ("*Bouvier, Yves*") at [1]); while they do not act as security for a plaintiff's claim, they act to circumscribe a defendant's right to deal with its own property. To alleviate the hardship occasioned on defendants, such injunctions are often paired with standard exceptions, which include a provision permitting the defendant to deal or dispose with its assets in the ordinary and proper course of its business (the "Ordinary Course exception").

2 The defendants in the present case were subject to a Mareva injunction and granted the Ordinary Course exception. However, after the defendants had

made significant withdrawals by relying on the Ordinary Course exception, the plaintiff took out a summons to restrict their use of the exception. Andrew Ang SJ granted the summons in part. Thereafter, the plaintiff alleged that new facts had surfaced, which justify further variations to the Mareva injunction to prevent the defendants from unscrupulously dissipating assets under the premise of the Ordinary Course exception. The present summons was brought before me, as the trial judge for the pending action, for my consideration.

Background facts

3 The plaintiff, Sumifru Singapore Pte Ltd, brought an action against the defendants. In the main, it was asserted that the first defendant, Felix Santos Ishizuka had, through the second and third defendants, which were companies under his control, acquired secret profits or commissions in breach of the first defendant's implied duties of good faith and fidelity or fiduciary duties which he owed to the plaintiff as its employee.[1]

Mareva injunction

4 Prior to the commencement of the trial of the action, the plaintiff applied for, and Lai Siu Chiu SJ granted, a world-wide Mareva injunction against the defendants, prohibiting them from disposing of, dealing with, or diminishing the value of their assets which are in Singapore, up to the value of US$3,180,029.48 (the "Mareva Injunction").[2] The Mareva Injunction was subject to the standard exceptions, including permission for the defendants to spend monies on legal expenses and on dealings "in the ordinary and proper

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1 Statement of Claim (Amendment No 1).

2 Mareva Injunction (HC/SUM 1418/2018); HC/ORC 2015/2018.

course of business" (*ie,* the Ordinary Course exception). Pursuant to paragraph 4 of the Mareva Injunction, it was stated that:[3]

> This Order does not prohibit the Defendants from dealing with or disposing of any of their assets in the ordinary and proper course of business. The Defendants shall account to the Plaintiff every 4 weeks (every Monday) for the amount of money spent in this regard.

5 Lai SJ further ordered that the defendants inform the plaintiff of "all their assets whether in or outside Singapore, whether in their own name or not and whether solely or jointly owned, giving the value, location and details of all such assets".[4]

6 Pursuant to Lai SJ's order to disclose, on 22 May 2018, the first defendant deposed, on the second defendant's behalf, that the sole asset of the second defendant was its Oversea-Chinese Banking Corporation Limited ("OCBC") Bank Account (the "OCBC Account"), which had a "value" of US$3,733,903.08.[5]

Withdrawals and SUM 3820/2019

7 Thereafter, from 22 May 2018 to 23 August 2019, the defendants notified the plaintiff that it would be making a range of withdrawals from the OCBC Account, amounting to about US$2.9m:[6]

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3 Mareva Injunction (HC/SUM 1418/2018) p 4, paras (3) and (4).

4 Mareva Injunction (HC/SUM 1418/2018) para (2).

5 Defendants' Bundle of Affidavits Vol 2 ("DBOA2") Tab H, p 2, para 5.

6 12th Affidavit of Angela Goh ("Angela 12"), para 9 and GSH-63.

S/N	Stated purpose	Amount (US$)
1	Rice trade and shipping services	2,389,638.96
2	Travel expenses	93,776.95
3	Salaries	120,450.69
4	Legal fees to Focus Law Asia LLC ("FLA")	SG$324,119.92 (approx US$235,460.16)
5	Other expenses (Office renovation, annual corporate fees, *etc*)	69,080.71
	Total withdrawals from OCBC Account from 22 May to 23 August 2019	**2,954,831.97**

8 Alarmed by the substantial withdrawals, the plaintiff filed Summons No 3820 of 2019 ("SUM 3820/2019"), for the following orders:[7]

(a) A declaration that the withdrawals were made in breach of the Mareva Injunction.

(b) In respect of the withdrawals:

(i) that the defendants make full disclosure, within five days, of all documents and correspondence in connection with the withdrawals and the business proceeds (if any) relating to the withdrawals; and

(ii) for the defendants to restore the assets dissipated by making payment into the second defendant's OCBC Account

[7] See Summons No 3820 of 2019.

and all business proceeds (if any) relating to the withdrawals made from the OCBC Account.

(c) That the Ordinary Course exception in the Mareva Injunction (see [4] above) be amended such that it provided:

> This Order does not prohibit the 1st and 3rd Defendants from dealing with or disposing of any of their assets in the ordinary and proper course of business. The 1st and 3rd Defendants shall account to the Plaintiff every 4 weeks (every Monday) for the amount of money spent in this regard.
>
> In respect of the 2nd Defendant, prior to every intended withdrawal in the ordinary and proper course of business, the 2nd Defendant shall provide the Plaintiff's solicitors 3 clear working days' advance notice of the 2nd Defendant's intention to make such withdrawal (including the bank account from which such withdrawal is to be made), together with the reason(s) why such withdrawal is in the ordinary and proper course of business and documents in support thereof …. Provided the Plaintiff has not objected to such withdrawal within 3 clear working days of receipt of the Notice, the 2nd Defendant may make such withdrawal in the ordinary and proper course of business.

9 In essence, the plaintiff sought, by way of SUM 3820/2019, to police any further withdrawals by the defendants from the OCBC Account, and to ensure that any business proceeds relating to the withdrawals would be channelled back to the OCBC Account.

10 In response, the first defendant filed an affidavit on behalf of the defendants, asserting that the withdrawals were to make payments "in the ordinary and proper course of business".[8] According to the first defendant, after the plaintiff stopped working with the second defendant to provide shipping

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[8] Defendant's Bundle of Affidavits Vol 1 ("DBOA1") Tab A, p 4 para 9.

between the Philippines and the Middle East in or around March 2018, he turned his attention to other shipping routes for which the second defendant could provide a service.[9] This eventually led him to run a shipping service on the "BIMP route" (Brunei, Indonesia, Malaysia, and the Philippines),[10] which involved the delivery of cargo to the Philippines.[11] To minimise any risk of losses from the BIMP route, and to allow the second defendant to reap a profit from the route, the first defendant sought a "backbone cargo" for the BIMP route.[12] Having conducted his research, the first defendant concluded that rice would be the "backbone cargo", as it is heavily consumed in the Philippines and as the cheaper alternatives existed outside the Filipino market.[13]

11 As a result, the first defendant and his colleague travelled around Southeast Asia to identify suitable rice brokers and suppliers for the Filipino market, and eventually decided on Xaris International Shipping & Trading Limited ("Xaris"), a rice broker based in Labuan, Malaysia.[14] Pursuant to their agreement with Xaris, the second defendant purchased 4,000 Metric Tonnes ("MT") of rice from various suppliers, at the price of US$1,418,500. Furthermore, a commission fee of US$50 per MT of rice was payable to Xaris, as the broker of the rice.[15]

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9 DBOA1 Tab A, p 11 para 32.

10 9th Affidavit of Felix Santos Ishizuka, para 10.

11 DBOA1 Tab A, p 10 para 29 and p 17 para 53.

12 DBOA1 Tab A, p 17, para 53.

13 DBOA1 Tab A, p 18, para 56.

14 DBOA1 Tab A, p 19 paras 57 to 58.

15 DBOA1 Tab A, p 20 para 64, p 21 para 65.

12 In the circumstances, the defendants' case in resisting the variations sought in SUM 3820/2019 was that the second defendant had engaged in the rice trade with the expectation that it would generate revenue, and further that it would form the backbone cargo of its BIMP shipping service. These payments and transfers were thus duly made in the proper and ordinary course of the second defendant's business.[16]

13 After hearing parties, Ang SJ declined to make a declaration that the withdrawals were made in breach of the Mareva Injunction. Nonetheless, he ordered the defendants to make full disclosure, within five days, of all documents and correspondence in connection with the withdrawals and business proceeds relating to the withdrawals ("the Disclosure order"). The defendants were further ordered to pay all business proceeds relating to the withdrawals back to the OCBC Account ("the Repayment order").[17]

14 The Ordinary Course exception was also amended, albeit not to the extent sought by the plaintiff. Under the new Ordinary Course exception, apart from the first and third defendants being required to account to the plaintiff every four weeks for the amount of money that they spent in the ordinary and proper course of business, additional duties were imposed on the second defendant ("the Notice obligation"):

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16 DBOA1 Tab A, p 24 para 74.

17 HC/ORC 5851/2019.

> … prior to every intended withdrawal in the ordinary and proper course of business, the [second defendant] shall provide the [p]laintiff's solicitors 3 clear working days' advance notice of the [second defendant's] intention to make such withdrawal …, together with the reason(s) why such withdrawal is in the ordinary and proper course of business and documents in support thereof [(collectively, the "Notice")].

15 Hence, while the second defendant was required to provide the Notice of its future intended withdrawals, such withdrawals would *not* be contingent on the plaintiff's non-objection, contrary to the broader order which the plaintiff had sought (see [8(c)] above). Instead, should the plaintiff wish to object to future withdrawals by the second defendant, the former would have to apply to court for an order to restrain any such withdrawals after the Notice was given.[18]

The present application

16 According to the plaintiff, since the making of the orders in SUM 3820/2019, new information has come to light. It appears that the defendants had made various false statements and disclosures, in effect preventing the plaintiff from policing the defendants' compliance with the Mareva Injunction.[19]

17 As a result of the alleged new facts that have surfaced, the plaintiff initiated the present application by way of Summons No 4746 of 2019 ("SUM 4746/2019"). The prayers sought in SUM 4746/2019 were subsequently amended and, as at the hearing of the summons, the plaintiff seeks a variety of orders, which include in the main:

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18 DBOA2 Tab D, p 6, para 13.

19 Plaintiff's Written Submissions ("PWS"), p 8, para 21.

(a) In relation to Ang SJ's order, compliance with the order and a variation of the Mareva Injunction to remove the Notice obligation inserted by Ang SJ (see [14] above).[20]

(b) Fuller disclosure orders in connection with the withdrawals[21] and the details of assets owned by the second defendant, whether in Singapore or outside.[22]

(c) Leave to cross-examine the first defendant on the affidavits which he has filed on behalf of the defendants in SUM 3820/2019 and the present SUM 4746/2019.[23]

The issues

18 Given the limited scope of SUM 4746/2019, the issues that fall for my consideration are whether the Mareva Injunction ought to be further varied, and, if so, what the scope of such variation ought to be.

Whether the Mareva Injunction ought to be varied

Applicable principles

19 As a starting point, it is undisputed that the court has the power to vary a Mareva injunction that has been granted: see *Sea Trucks Offshore Ltd and others v Roomans, Jacobus Johannes and others* [2019] 3 SLR 836 at [55]; *Abbey Forwarding Limited v Hone & others* [2010] EWHC 1532; *Compagnie*

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20 All Other Summons (Amendment No 1) (HC/SUM 4746/2019) paras 1 and 2.

21 All Other Summons (Amendment No 1) (HC/SUM 4746/2019/2019) para 4.

22 All Other Summons (Amendment No 1) (HC/SUM 4746/2019/2019) para 5.

23 All Other Summons (Amendment No 1) (HC/SUM 4746/2019/2019) para 6.

Noga D'Importation et D'Exportation SA and another v Australian and New Zealand Banking Group Ltd and others [2006] EWHC 602 (Comm) ("*Noga*").

20 In *Zakharov and others v White and others* [2003] EWHC 2560 (Ch) ("*Zakharov*"), Peter Smith J observed that, in determining whether a variation of a Mareva injunction is warranted, the court has to balance two competing interests (*Zakharov* at [48]):

> The claimants have a legitimate interest in preserving the funds. Against that, in respect of funds over which they have no proprietary claim, they have no proprietary interest and they are not entitled to use a [Mareva injunction] as a method of obtaining security and bettering their position *vis-a-vis* the defendant and *vis-a-vis* any other creditors of the defendant.

21 Fundamentally, "[t]he essential test is whether it is in the interests of justice to make the variation sought", and "[b]ecause the court has already been satisfied of a risk of dissipation[,] judges are entitled, on an application to vary [a Mareva injunction], to have a healthy scepticism about assertions made" by the defendant: *Noga* at [9].

22 A case that demonstrates the application of the above principles is *Thevarajah v Riordan and others* [2015] EWHC 1949 (Ch) ("*Thevarajah*"). In *Thevarajah,* the applicant-claimant sought, among others, a variation to the "ordinary and proper course of business" exception in a Mareva injunction, which it had obtained against the respondent-defendants. In gist, the variation would restrict the disposal of real property by the defendants, and require the defendants to provide specified information relating to any proposed sale, lease, transfer or conveyance of their real property. Such specified information included providing the identity of and the defendants' relationship to the counter-party of any transaction of real property, as well as the total purchase price and consideration to be received in such a transaction.

23 The variation was granted by the judge, who considered that reasonable doubts were raised about the transactions in relation to the defendants' real property. In relation to one property named "The Devonshire", the defendants had informed that the property was to be sold for £1m, and that all of the sale proceeds of that property were to be paid to the Bank of Cyprus to reduce their indebtedness to the bank. No details were however provided of the prospective buyers, save to say that the sale would be an arm's length transaction and therefore in the ordinary course of business. However, one of the defendants, Mr Riordan, had previously stated on affidavit that "The Devonshire" was valued at about £1.8m, and another judge had found it to be worth just under £1.325m. The proposed sale price was thus well below both figures, thus generating suspicion that the transactions might be at an undervalue and/or to a related party of the defendants.

24 Further doubts were raised concerning two other properties owned by the defendants, namely "The Blarney Stone" and "The Jester", for which no particulars were provided. In relation to The Blarney Stone, the circumstances of any possible transaction was opaque, and the actual balance due to the chargees of the property were not disclosed.

25 Given the opaqueness of the defendants' dealings with its real property, which were subject to the Mareva injunction, the judge considered that the variations sought in relation to the real property were "reasonably required by the [claimant] for the policing of" the Mareva injunction (*Thevarajah* at [45]). Particulars of any intended purchaser would be highly relevant to the question of whether the purchaser was related to the defendants; if there were a connection, this was likely to generate suspicion deserving of investigation. Contrarily, if the purchaser was a reputable purchaser dealing at arm's length, any suspicion would be allayed. It was also appropriate for the claimant to know

how the defendants intended to distribute monies received for the properties, for only by knowing that could the claimant be satisfied that the proceeds were being properly accounted for.

The plaintiff's submissions

26 At the outset, it bears emphasising that the present application is *not* an appeal against the orders granted by Ang SJ, who considered the submissions of the parties relating to the alleged opacity of the defendants' withdrawals, which related in main to the rice trade and shipping services which were purportedly provided by the second defendant.

27 Hence, to ensure that the present summons is not utilised as a backdoor appeal against Ang SJ's decision (which has not been appealed against), only points that were not raised before Ang SJ in SUM 3820/2019 ought to be considered.

28 In this regard, the plaintiff submits that the defendants have breached both the Disclosure order and the Repayment order made by Ang SJ.[24] For one, it is alleged that the defendants misrepresented to Ang SJ that there were no buyers at the time SUM 3820/2019 was heard. Pursuant to the Disclosure order, evidence has now surfaced that there were in fact firm buyers of the rice cargo by that time.[25] Furthermore, the defendants had earlier disclosed that there were *no* sale proceeds for the rice cargo. However, it appears that they had received at least some sale proceeds for the cargo.[26] Finally, the defendants have refused

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24 PWS pp 11 to 17.

25 PWS pp 12 to 14, paras 10 to 11.

26 PWS pp 14 to 15, paras 12 to 13.

to disclose the location of the rice cargo, save that the balance bags of rice are "stored in a warehouse in the Davao region."[27] Collectively, the plaintiff submits that the defendants' evasive nature is inexcusable and contrary to their duty to disclose.

29 Furthermore, the plaintiff points to the fact that the defendants have failed to provide sufficient disclosure in respect of their business travel expenses, which amount to US$93,776.95.[28] For example, while flights and hotel stays in Japan and the USA were claimed for, it is alleged that the second defendant has no business in those places. To add to the suspicion, the flights and hotel stays to those locations, which were purportedly "business expenses", were made during the Christmas and New Year holiday period. In fact, the defendants have not shown any revenue from their purported "business" in Japan and the USA.[29]

30 Additionally, the plaintiff points to an intended withdrawal by the defendants, which they notified the plaintiff of on 13 September 2019. The intended withdrawal was for the sum of US$161,220. It was purportedly for payment to Harbor Star Shipping Services ("Harbor Star") for tugboat fees for vessels chartered between 2016 and August 2017.[30] As the defendants had failed to provide the underlying invoices relating to the Harbor Star claim, it is suggested that the defendants are not in fact liable to pay Harbor Star. This is in particular, as Harbor Star had demanded payment from the plaintiff for the *very*

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27 DBOA2 Tab D, p 21, para 61.

28 PWS p 17, paras 20 and 23.

29 PWS p 18 para 24 and p 19 para 27(c).

30 PWS p 19, para 28.

same invoices by sending a statement of account to the plaintiff in September 2018.[31]

31 Finally, the plaintiff placed much emphasis on the fact that the second defendant's purported business, which relates to the importation of rice cargo, is illegal in the Philippines.[32] In this respect, conflicting expert evidence was tendered by the plaintiff and the defendants,[33] and the plaintiff took great pains to try to show that the defendants' expert, who contends that the second defendant's business is *not* illegal under Filipino law, ought to be rejected in favour of the evidence of their expert, who takes an opposing view.

The defendants' submissions

32 In response, the defendants submit that the second defendant has not been wrongfully dissipating the business proceeds from the rice trade. In fact, to date, proceeds amounting to US$92,166 (approximately S$125,873.87) have been deposited back into the OCBC Account. A further sum of US$9,821.70, which the second defendant had previously overpaid to one Wilhelmsen Service Malaysia Sdn Bhd, has also been repaid into the OCBC Account.[34] It is further stated in the submissions that the second defendant "will continue" to repay business proceeds from the rice trade into the OCBC Account.[35]

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31 PWS p 20, paras 29 to 30.

32 PWS p 21, para 36.

33 Affidavits of Silverio Benny Jubelag Tan (for the plaintiff) and Philip Sigfrid A Fortun (for the defendants).

34 Defendant's Skeletal Submissions ("DSS") pp 16 to 17, paras 37 to 39.

35 DSS p 16, header B.

33 Furthermore, in accordance with the Disclosure order made by Ang SJ, the defendants have provided a link including the relevant documentation supporting the withdrawals.[36] Since Ang SJ's order, the defendants have also given advance notice to the plaintiff of any intention to withdraw from the OCBC Account, as well as the purpose of such withdrawals.[37]

34 As regards the plaintiff's allegation that the defendants had concealed and/or failed to disclose the business proceeds from the rice trade in the hearing before Ang SJ, it submits that the second defendant only began selling and releasing the rice cargo from 1 September 2019 onwards. Hence, when Ang SJ heard SUM 3820/2019 on 23 August 2019, there was indeed *no* sale of the rice cargo and no business proceeds.[38] The alleged reason for the delayed release of the rice cargo was that, although the taxes for 1,500 MT of rice cargo had been paid for by August 2019, the taxes on the remaining 2,500 MT of rice cargo was only paid on or around 28 August 2019. That was when one of the second defendant's customers, ANA Traders, agreed to assist the second defendant with its tax obligations and thereafter purchase 35,000 of the released bags of rice. Therefore, until 28 August 2019, there was simply no way for the second defendant to sell the 4,000 MT of rice cargo.[39] In any event, since the second defendant began selling the rice cargo in September 2019, it has duly provided the plaintiff with detailed breakdowns of the dates and quantities of the rice cargo sold to customers, and such voluntary disclosure by the defendants, it submits, is clear evidence of their *bona fides* in carrying on the rice trade.[40]

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36 DBOA2 Tab D, p 57.

37 DSS p 18, para 43.

38 DSS p 21, para 54.

39 DSS pp 21 to 22, paras 55 to 56.

40 DSS p 22, para 57.

35 As for the business travel expenses, it asserts that they were incurred for business development purposes, and not for the first defendant's annual family holidays, as insinuated by the plaintiff.[41]

36 Turning to the Harbor Star payment, the defendants submit that the appropriate recourse ought to be an application for an injunction against the withdrawal.[42] Nonetheless, the intended withdrawal, while not supported by invoices, was based on Harbor Star's Statement of Account. They were outstanding because they were fees incurred for the benefit of the plaintiff, when the plaintiff had a working relationship with the defendants. It is therefore hypocritical for the plaintiff to raise the Harbor Star matter as a basis to justify the variation. This is in particular as plaintiff had itself directed Harbor Star to seek payment from its contracting party, thereby causing Harbor Star to seek payment from the defendants.[43]

37 Finally, the defendants assert that the rice trade is legal under Filipino law.[44]

My decision

Illegality of the rice trade

38 In my judgment, the plaintiff's argument that the defendants' rice trade is illegal is irrelevant to the present application, which involves a variation of the Mareva Injunction. As observed in *The "Nagasaki Spirit"* [1993] 3 SLR(R)

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41 DSS p 30, para 79.

42 DSS p 27, para 72.

43 DSS pp 28 to 29, paras 73 to 76.

44 DSS p 7.

878 at [16], "the sole purpose of the [Mareva] injunction is the prohibition of dealings by the defendant in order to defeat a judgment against him". Hence, the requirement of showing a real risk of dissipation lies at the heart of the court's power to grant any Mareva injunction. Therefore, merely demonstrating *dishonesty* on the part of the defendant is insufficient for the grant of a Mareva injunction, unless such dishonesty had a real and material bearing on the risk of dissipation of assets: *Bouvier, Yves* at [5] and [93].

39 In this case, all the court has before it is *conflicting* expert evidence relating to the legality of the defendants' commercial exploits, which have not been tested under cross-examination. *Even if* this court were minded to find that the second defendant's rice trade is illegal on the back of the conflicting expert evidence, this would not justify a variation of the Mareva Injunction. Such illegality, in and of itself, simply does not go towards showing a real risk of dissipation.

40 Furthermore, a finding of such illegality would not support the purpose of the Mareva Injunction, which seeks to ensure that there remains a sufficient pool of assets available for enforcement should the plaintiff obtain a judgment against the defendants. A determination of the illegality of the rice trade could stifle the repatriation of the proceeds from the rice trade, thereby indirectly allowing the defendants to keep such proceeds out of the jurisdiction, and possibly beyond the reach of the plaintiff. Therefore, I did not find it appropriate to consider the issue of illegality that was so fervently argued before me.

Harbor Star

41 I also make no findings as regards the intended withdrawal for the Harbor Star invoices. The defendants evidently complied with the Notice obligation by notifying the plaintiff that such withdrawals were to be made. As

the defendants submit, the proper application to be made to prevent such a withdrawal is an application for an *injunction*, as Ang SJ had explicitly declined to grant the plaintiff's application for any future withdrawals to be contingent on the plaintiff's approval.

Business proceeds from the rice trade

42 Turning to the other grounds raised by the plaintiff, it appears to me that the real complaint is that while significant sums of money have been channelled for the defendants' alleged business expenses, little has been returned to the second defendant's OCBC Account. These are however not new arguments, as, before Ang SJ, the plaintiff had similarly raised doubts about the transactions relating to the rice trade.[45] While new grounds have allegedly surfaced since the hearing of SUM 3820/2019, they relate in the main to alleged misrepresentations by the defendants. In particular, the key allegation appears to be that the defendants had wrongfully represented to Ang SJ that there were no business proceeds from the rice cargo, when in fact there were such business proceeds. In direct response, the first defendant has explained, on affidavit, that the rice cargo was only sold from September 2019 onwards, *after* the taxes on the rice cargo were paid. Thus, there was in fact *no* business proceeds from the rice trade when SUM 3820/2019 was heard.[46]

43 Nonetheless, it is noted that in an application to vary a Mareva injunction, the court, having already been satisfied of a risk of dissipation on the part of the defendants, ought to have a healthy scepticism about the assertions

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45 Minute Sheet (SUM 3820/2019) p 2, per Dedi.

46 DBOA2 Tab E, p 10, para 33.

made by the defendants (*Noga* at [9] and Steven Gee, *Commercial Injunctions* (Sweet & Maxwell, 6th Ed, 2016) at para 21-051).

44 There is some merit to the plaintiff's case that, in light of additional disclosures made by the defendants after SUM 3820/2019, certain doubts arise about the truthfulness of their disclosures. In his affidavit dated 2 October 2019, the first defendant alleged that the second defendant had agreed to prices for some rice cargo with one Ken Ng "in or around late July 2019", although Ken Ng only collected the rice he purchased in September 2019, due to the delays caused by the tax issues.[47]

45 This may be contrasted with the first defendant's affidavits *prior* to the hearing before Ang SJ, where it was *suggested* that the second defendant had not found buyers for *all* 4,000 MT of the rice cargo.[48] No mention was made of the purported agreement to sell rice cargo to Ken Ng, which was apparently concluded by July 2019. Furthermore, there is *some* suspicion of the genuineness of the rice trade, as the defendants have thus far refused to disclose the precise location of the rice cargo, purportedly because it fears that the plaintiff would use such information to sabotage the second defendant's rice trade.[49]

46 However, balanced against the plaintiff's allegations and the supposed inconsistency in the defendants' evidence in SUM 3820/2019 and the present application, is the fact that the defendants had tendered bills of lading supporting its claim that 4,000 MT of rice cargo had in fact been purchased from three

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47 DBOA2 Tab D, p 14, para 43(a).

48 DBOA1 Tab B, p 13, para 38.

49 DBOA2 Tab D, p 21, para 62.

different suppliers.[50] Furthermore, the defendants have tendered a detailed breakdown and invoices of the sale of their rice cargo,[51] which support their allegation that PHP 54,006,750 (approx US$1,062,420.79) of rice was sold by 2 October 2019[52] and a further PHP 14,387,500 (approx US$283,030.90) of rice was sold by 6 November 2019.[53]

47 Nonetheless, while it is alleged that, by 6 November 2019, PHP 30,012,884 (approx US$590,855.54) had been received and PHP 38,381,366 (approx US$755,617.41) remained outstanding for collection,[54] *only* US$101,987.70 appears to have been repatriated back to the OCBC Account by 28 November 2019.[55] Even then, the transfer of the US$101,987.70 was only *pending* during the hearing before me, as the OCBC Bank staff had requested for more information from the defendants before processing the transfer.[56] Crucially, it also appears convenient that, while the defendants' case is that the rice cargo had been sold since early September 2019, attempts to repatriate the sale proceeds were only made around November 2019, about three months after Ang SJ made the Repayment order.[57] The attempts at repatriation were also only brought to my attention by way of an affidavit filed on 28 November 2019, a day before the substantive hearing of the present summons, which was first heard by me some two months earlier, on 24

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50 DBOA2 Tab D, p 10, para 31; DBOA1 Tab C, pp 105 to 107.

51 DBOA2 Tab D, Tab 5 (p 63) and Tab 6 (p 67).

52 DBOA2 Tab D, p 13 para 39.

53 DBOA2 Tab E, p 20 para 59.

54 DBOA2 Tab E, p 22.

55 Felix Santos Ishizuka's 20th Affidavit (28 November 2019), p 5.

56 Felix Santos Ishizuka's 20th Affidavit (28 November 2019), p 6.

57 Felix Santos Ishizuka's 20th Affidavit (28 November 2019), pp 5 to 7.

September 2019. In my view, the belatedness and convenient timing of the alleged repatriation throws the *bona fides* of the defendants in complying with Ang SJ's Repayment order into doubt.

48 The purported transfer of US$101,987.70 raises an additional concern, as, in seeking to effect the transfer, the first defendant informed OCBC Bank that there were "VARIOUS GOODS FROM *FRESH PRODUCE* TO DRY CARGO" and that "ORIGIN: 1. DAVAO, PHILIPPINES (*BANANA/PINEAPPLE*) 2. HOCHIMINH, VIETNAM (RICE CARGO) *TO NAME A FEW*" [emphasis added].[58] In providing the information to the bank, the first defendant referred to cargo *apart from* the rice cargo, suggesting that it has failed to make full disclosure to the court, in spite of the Disclosure order.

49 In the circumstances, even if I were to accept that the second defendant is indeed engaged in the rice trade, and that such had caused the significant withdrawal from the OCBC Account, there appears to be limited (if any) compliance with Ang SJ's Repayment order. It expressly stipulates that the defendants "*shall* pay *all* business proceeds relating to the Withdrawals into the" [emphasis added] second defendant's OCBC Account.[59] Furthermore, doubts have arisen as to whether the defendants have adequately complied with the Disclosure order.

Travel expenses

50 To add to the concern, while close to US$100,000 has allegedly been withdrawn for business travels, there is *no* evidence showing the fruits of such

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58 Felix Santos Ishizuka's 20th Affidavit (28 November 2019), p 5.

59 Order of Court (SUM 3820/2019), para 2.

travels, nor is there evidence showing that such travels were for business purposes. Indeed, all that the court has in support of such trips are the *bare* assertions of the first defendant that they were incurred for the first defendant to meet clients and brokers to pursue business opportunities,[60] and that such trips have "certainly borne fruit for the company".[61] Yet, to-date, there is no evidence that the defendants have any business presence in Japan or the USA.

51 Reviewing the evidence in totality, I am satisfied that this is an appropriate case to make further orders to fortify the orders made by Ang SJ. In view of the defendants' conduct subsequent to the learned judge's orders, this is necessary to ensure that the defendants are restrained from evading justice by disposing of assets otherwise than in the ordinary course of business, with the result that if the plaintiff obtains judgment in the action, such judgment may remain unsatisfied.

Variation order

52 In *A J Bekhor & Co Ltd v Bilton* [1981] 2 All ER 565, the English Court of Appeal observed that a means of policing the Mareva injunction is to order the cross-examination of the defendant on his affidavit (at 579). Alternatively, the permission to allow the defendant to remove further money pursuant to the Ordinary Course exception may be withdrawn unless and until the defendant has made a full and proper disclosure of the matters which the court thought were necessary to establish the true nature of the defendant's assets, and that the defendant has given a proper explanation of his conduct between the material dates (at 579).

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60 DBOA2 Tab E, p 18, para 54.

61 DBOA2 Tab E, p 19, para 56(b).

53 In my judgment, while the plaintiff has sought a multitude of variations, which include the removal of a variation granted by Ang SJ, the fundamental purpose of the plaintiff's application in the present summons is to preserve, and to increase to a satisfactory amount, the pool of assets available, to avoid the prospect of a barren judgment. To achieve this, the appropriate order to be made ought to be one which would prod the defendants to return the business proceeds from the rice trade, and thereafter restrict unwarranted withdrawals from the OCBC Account. In my view, the Disclosure and Repayment orders made by Ang SJ go some way towards achieving these goals, and any variation order that I grant ought therefore to *supplement*, rather than *overhaul,* the orders made prior.

54 Therefore, instead of removing parts of Ang SJ's order, I make the following *additional* orders:

(a) That the defendants make full and frank disclosure of the amount of business proceeds stemming from the rice trade that are available to be repatriated to the OCBC Account within ten business days of the date of this judgment.

(b) After the disclosures in (a) have been made, all of such business proceeds, as well as additional business proceeds which are collected in relation to the rice trade, are to be remitted to the OCBC Account within 15 business days from the date of this judgment or the date of the collection of such proceeds (whichever is applicable). This shall be a continuing obligation.

(c) Should the defendants fail to comply with the orders in (a) and (b) above within the stipulated time periods therein, all further withdrawals pursuant to the Ordinary Course exception of the Mareva

Injunction, as amended by paragraph 3 of Ang SJ's order in SUM 3820/2019 (HC/ORC 5851/2019), are prohibited unless and until the above order(s) are complied with.

Conclusion

55 For the above reasons, I allow the plaintiff's application in part.

56 I will hear parties on costs at a later date.

Vincent Hoong
Judge

Dedi Affandi bin Ahmad and Dharini Ravi (Rajah & Tann Singapore LLP) for the Plaintiff;
Khoo Ching Shin Shem, Teo Hee Sheng, Christian and Yong Zhixin, Esther (Focus Law Asia LLC) for the Defendants.