OCM Opportunities Fund II, LP and Others v Burhan Uray (alias Wong Ming Kiong) and Others
[2004] SGHC 165

Case Number : Suit 50/2004, SIC 1150/2004

Decision Date : 06 August 2004

Tribunal/Court : High Court

Coram : Belinda Ang Saw Ean J

Counsel Name(s) : Davinder Singh SC, Yarni Loi, Kabir Singh and Tan Mei Yen (Drew and Napier LLC) for plaintiffs; N Sreenivasan and Nigel Pereira (Straits Law Practice LLC) for first to eighth and 11th, 13th and 14th defendants; A S Shankar (Rajah Velu and Co) for ninth and tenth defendants; Molly Lim SC and Ambrose Chia (Wong Tan and Molly Lim LLC) for 12th defendant

Parties : OCM Opportunities Fund II, LP; Columbia/HCA Master Retirement Trust; Gryphon Domestic VI, LLC; OCM Emerging Markets Fund, LP; ASO I (Delaware) LLC — Burhan Uray (alias Wong Ming Kiong)

Injunctions – Mareva injunction – Affidavits of assets – Application for order to cross-examine defendants on affidavits on ground that affidavits incomplete and lacking in particulars – Test for order for cross-examination – Whether order just and convenient

Injunctions – Mareva injunction – Scope of jurisdiction – Whether salary caught by injunction

6 August 2004

Belinda Ang Saw Ean J:

1 This is my Grounds of Decision on the plaintiffs' application to cross-examine various defendants on their affidavits of assets. The first seven defendants are Burhan Uray ("D1"), Joseph Wong Kiia Tai ("D2"), Soejono Varinata ("D3"), H Sudradjat Djajapert Junda ("D4"), Hendrick Burhan ("D5"), Joseph Siswanto ("D6") and PT Daya Guna Samudera Tbk ("D7"). The tenth defendant is Gary Chan Wei Long ("D10"). The 11th and 13th to 15th defendants are WMP Trading Pte Ltd ("D11"), Borneo Jaya Pte Ltd ("D13"), Natura Holdings Pte Ltd ("D14") and Handforth Profits Ltd ("D15") respectively.

2 With the exception of D15, the above-named defendants have appealed against my order of 25 May 2004 allowing the plaintiffs' application. In the case of Betty Pai alias Pai Sha, the 12th defendant ("D12"), her appeal is against that part of the order directing her to file a further affidavit to explain the whereabouts of the proceeds of sale of the property at 99 Meyer Road, #12-01 The Sovereign, Singapore 437920.

3 The plaintiffs are OCM Opportunities Fund II, LP; Columbia/HCA Master Retirement Trust; Gryphon Domestic VI, LLC; OCM Emerging Markets Fund, LP; and ASO I (Delaware) LLC. At the hearing, they were represented by Mr Davinder Singh SC assisted by Mr Kabir Singh and Ms Yarni Loi. Mr A S Shanker represented D10. Ms Molly Lim SC assisted by Mr Ambrose Chia represented D12. The remaining defendants, whom I shall, for convenience, refer to collectively as the "majority defendants" were represented by Mr N Sreenivasan assisted by Mr Nigel Pereira.

4 A fuller account of the facts of the case appears from my judgment in *OCM Opportunities Fund II, LP v Burhan Uray (alias Wong Ming Kiong)* [2004] SGHC 115. In brief, the plaintiffs' case against the defendants is that, save for D12 to D15, the defendants or some of them conspired together to commit a complex fraud. They created fictitious sales of fish or other related products to

related companies. They represented to the plaintiffs that the contracts were genuine and thereby falsely inflated the profits D7 appeared to be earning. This enabled the defendants to deceive the plaintiffs into buying bonds guaranteed by D7. The funds from the issue of the bonds were allegedly diverted and not invested into D7's business as represented.

5 On 19 January 2004, the plaintiffs obtained *ex parte* a worldwide injunction ("the Mareva order"). It was a relatively standard order. It restrained the defendants from dealing with their assets, except within permitted limits. It required them to disclose their worldwide assets by affidavit. The defendants were required by the terms of the order to, *inter alia*:

> Disclosure of Information
>
> … inform the Plaintiffs in writing at once of all [their] assets whether in or outside Singapore and whether owned legally or beneficially by [them] and whether in [their] own name or not and whether solely or jointly owned, giving the value, location and details of all such assets.
>
> …
>
> Exceptions to the Order
>
> (1) Provided that the terms of this order which appear under the heading "Disclosure of Information" have first been fully complied with to the satisfaction of the Plaintiffs, this order does not prohibit each of the Defendants, insofar as they are natural persons, from spending a reasonable amount a week towards his ordinary living expenses, and in respect of all the Defendants, a reasonable sum on legal advice and representation. But before spending any money the Defendants must inform the Plaintiffs' solicitors where the money is to come from.
>
> (2) This order does not prohibit each of the Defendants from dealing with or disposing of any of its assets in the ordinary and proper course of business. Each of the Defendants shall account to the Plaintiffs weekly for any assets so disposed of and for the amount of money spent in this regard.

6 There is some history to the plaintiffs' application to cross-examine the defendants. The defendants filed the first set of affidavits of assets after I had refused their application made on 6 February 2004 to suspend disclosure of assets until after the determination of their application to set aside the *ex parte* Mareva order, including the striking out of the action. The majority defendants and D12 also sought, in the alternative, a stay of the proceedings on grounds of *forum non conveniens*. The plaintiffs' application to cross-examine the defendants on the affidavits of assets was filed on 1 March 2004. The defendants' reply affidavits, some of which, *inter alia*, disclosed additional assets or furnished details of assets already disclosed, were filed after the conclusion of the *inter partes* hearing.

7 The defendants did not succeed at the *inter partes* hearing and appealed against my decision made on 5 March 2004. I refused to stay the hearing of the application to cross-examine the defendants pending the determination of the defendants' appeal to the Court of Appeal against the whole of my decision; so did Chao Hick Tin JA, who heard the defendants' application for an expedited appeal on 10 March 2004 and further arguments on 17 March 2004. Chao JA also directed D1 to D8 and D11 to D15 to file their defence by 26 March 2004. Apart from these two directions, the proceedings were stayed pending determination of the appeal.

Affidavits of assets

8 The plaintiffs complained that the defendants had not complied with the Mareva order as the lists of assets furnished were incomplete. The plaintiffs' comments on the affidavits of assets are summarised below.

D1, D2 and D3

9 D1 disclosed assets worth S$3.4m. This was made up of two properties in Indonesia, cars in Singapore and Indonesia, as well as bank accounts in Indonesia and Singapore. The balances in the bank accounts were negligible in sharp contrast to D1's reputation as a "timber king". No income-generating assets were revealed.

10 D2 is a director of Oriental Timber Corporation ("OTC"), which used to operate significant logging activities in Liberia on behalf of the Djajanti Group. D2 disclosed his 10% interests in the shares of OTC, indirect interests in Natura Holdings (D14) and approximately S$80,000 in cash deposits.

11 D2 gave no value or other details of his 10% shareholding in OTC and indirect interests in D14, which he had initially denied owning in his first affidavit dated 6 February 2004.

12 D3's first affidavit of assets disclosed only approximately S$142,505 worth of assets, excluding shares. He disclosed three motor vehicles. He disclosed no real property. In his reply affidavit, he disclosed his shares in various companies in the Djajanti Group, but only gave the par value of those shares as opposed to their value on a simple net asset basis. D3's assets were lesser in value than what D1 had disclosed. Of the S$142,505 worth of assets, excluding shares, only S$104,505 was in cash deposits. No other income-generating assets, apart from the shares in companies in the Djajanti Group, were disclosed.

13 The affidavits of assets of the two sons were equally unremarkable. The bank balances disclosed were negligible. The value of the overseas assets was trivial. The plaintiffs were not convinced by what was disclosed. Mr Singh commented that the people concerned are from a wealthy family in Indonesia headed by a "timber king". D3, by his own admission at para 2 of his affidavit filed on 6 February 2004, was the major shareholder in the Djajanti Group and in effective control of the Group and related companies. D1 had supposedly transferred his wealth to his sons, D2 and D3. According to D1, since then, "whenever I need any money, [D2] and [D3] oblige me." If D1 had told the truth, then D2 and D3 had not disclosed fully the assets owned by them in their sole names or jointly with others or held by others as nominees. Conversely, if D2 and D3 were to be believed on their respective affidavits of assets, then D1 had lied. So either D1 was lying or D2 and D3 was lying , or all of them were lying.

D4, D5 and D6

14 D4 was an old friend and business partner of D1 and was one of the founding members of PT Bintuni Minaraya Tbk ("BMR"). D4 disclosed that his total assets worldwide amounted to S$39,901. This was comprised of cash in Bank Danamon of Rp140,000,000 (S$26,601) and a 1997 Toyota car with registration no B7788-ZZ with an estimated value of approximately Rp70,000,000 (S$13,300). He disclosed a pension from the Djajanti Group, but gave no other details.

15 The plaintiffs had uncovered other assets like a green 1996 Mercedes 300 GE Jeep with registration no B2411 WO and a white Mercedes 230 Automatic with registration no B2709 ZB. In D4's reply affidavit, D4 added to his list of assets shares in the Djajanti Group and provided the par value of the shares. No other income-generating assets were disclosed.

16 D5 is another of D1's sons. The grand total of his assets worldwide was stated as S$4,894. He disclosed the existence of a bank account at BCA Jakarta, but gave no other details. In his reply affidavit, D5 disclosed another bank account with Bank Mandiri with a balance of Rp25,828,890.28 as at 10 March 2004.

17 D6 disclosed a property in Jakarta and shares in various companies. No other details were provided as to value of the property and the shares.

D7

18 Johnson Sihombing ("Sihombing") affirmed the affidavit of assets on behalf of D7. D7's list of assets of US$107,385,854 comprised of cash and bank balances, fixed assets and investments. In his reply affidavit, he acknowledged that the list was not up to date. It was a list that he was comfortable with and willing to furnish before consulting his legal counsel on Indonesian corporate law. In short, it was the best list he could furnish at short notice.

19 The plaintiffs found Sihombing's excuse untenable as he was already aware of what was required from his experience of the BMR proceedings. Siswanto (D6) filed a list of assets on 22 November 2001 on behalf of BMR. On 22 May 2002, Sihombing filed an affidavit on behalf of BMR attaching a more detailed list of assets, list of vessels as well as encumbrances on the assets. Prior to that, the consolidated financial statements made up to 30 June 2001 were disclosed. No accounts were disclosed here although in his reply affidavit he seemed to suggest that D7's annual accounts had been audited.

D11, D13, D14 and D15

20 D2 filed affidavits of assets on behalf of D11, D13, D14 and D15. As regards D11, he said that D11 had no assets. In November 2001, D10 filed, on behalf of D11, an affidavit in which he stated that D11 had a United Overseas Bank ("UOB") account with a balance of S$10,577.72 and an American Express Bank account with a balance of US$2,884.22.

21 D13 claimed it had US$2,000 in Citibank Singapore and about US$3,800 in Bangkok Bank Singapore. In his reply affidavit on D13's behalf, D2 disclosed a property located at 10 Anson Road, #02-14 International Plaza, and a monthly rental income of S$14,000 from this property after the plaintiffs had pointed out D2's omission. He put down his omission to a mistaken impression that the office unit had been sold.

22 D2 did not disclose on behalf of D13 the property located at 10 Anson Road, #27-15 International Plaza. In addition, there were further bank accounts not disclosed by D2. D13 is said to have a Singapore-dollar account no 01-01-3928903 with Standard Chartered Bank and two accounts with American Express Bank, namely Singapore-dollar account no 8420808 and US-dollar account no 009420101. Earlier, in November 2001, D13 was the registered owner of eight barges, three leasehold properties, motor vehicles and bank accounts. D2 and D3 both gave incontrovertible evidence that D1 used Borneo Jaya (D13) as a private company for his own personal needs. Two of the three shareholders of D13 are British Virgin Islands companies. Nothing was said about these two offshore entities.

23 Like D1 and D14, D13 applied to vary the Mareva order to meet some payments and the court's attention was drawn to the fact that the amount D13 sought to withdraw exceeded the amounts in their bank accounts as disclosed by D2.

24 A Malaysian consortium supposedly "ran" D14. The majority defendants admitted to there being links amongst D14, OTC and D2. However, the links were not explained. The Registry of Companies and Businesses search results in May 2004 showed the shareholders of D14 to be Hermanto and Ng Yew Koon. Neither of them are Malaysians.

25 According to D2, as at February 2004 D14 had about US$1,880 in Citibank Singapore and about S$1,800 in Oversea-Chinese Banking Corporation ("OCBC") Singapore. The plaintiffs themselves uncovered two OCBC accounts. They were OCBC bank account nos 501-583421-001 and 501-115472-201. It is not known which OCBC account D2 was referring to in his affidavit.

26 In the application to vary the injunction, D14 sought withdrawal of S$10,118.47 which was in excess of the amounts in the two bank accounts disclosed by D2. That, the plaintiffs submitted, suggested the disclosure of assets was untruthful. As at 30 September 2001, D14 had total assets of S$121,661,354.92 including moneys placed in fixed deposits amounting to S$12,514,140.24 and a cash balance of S$7,143,678.67. Their application for variation of the Mareva order was dismissed on 7 April 2004.

27 D2 said that he learned about D15 being struck off the British Virgin Islands register of companies in 2003 when he was asked by the other members of the consortium about the assets of D14 and D15. That suggested that D15 had some assets. But D2's affidavit did not disclose what had happened to the assets of D15. In an affidavit filed on 22 November 2001 in the BMR proceedings, one Lau Chin Hei deposed that the assets of D15 comprised of US$452,966.72 and S$26,586.39.

D10

28 D10 disclosed some bank accounts and an American Express Bank fixed deposit of US$400,000 which he claimed belonged to his "aged father" who had entrusted the money to him. There was also a Mercedes E280 with registration no SCR4312T with a present value of S$92,000. The car was paid for by monthly instalments and the balance owing on the car loan was S$36,000.

29 The plaintiffs pointed out that D10's father was known to D1 and D7. D10 wanted to make certain withdrawals for expenses and legal bills. That was not pursued in the end. This, the plaintiffs alleged, was significant. D10 had obviously met these payments from other assets or sources of funds and had completely failed to disclose what these assets were or where his funds came from.

D12

30 D12 was joined in these proceedings as a nominee. D12 disclosed that her total assets amount to approximately S$373,834. She deposed that a considerable part of her assets had been set aside or used for various matters including providing monetary support for her aged parents and for donations. The plaintiffs pointed out that it was unclear whether or not the money "set aside" came from the S$373,834 she had disclosed or whether they came from other sources of income and/or assets.

31 The plaintiffs said that there were inconsistencies in her affidavit. She had earlier deposed in her 6 February 2004 affidavit that whilst she was with D1, he had given her US$100,000 or more a year and she had saved these moneys in her accounts with Citibank and UOB. In the BMR proceedings, D12 admitted to having as at 26 October 2001 cash deposits totalling S$6,511,750.59 in her accounts with UOB and Citibank. Today, she has S$373,834.

32 D12's affidavit in reply did not cover the whereabouts of the sale proceeds of the apartment

at The Sovereign. She claimed not to have any assets in Singapore and not to be resident in Singapore.

33 None of the defendants had said anything about assets held jointly or on their behalf as nominee. The plaintiffs also made the point that none of the defendants, up to the hearing of the application to cross-examine, had complied with paras (1) and (2) of the Mareva order under the heading "Exceptions to this Order". Moreover, the defendants' affidavit in support of the application for an expedited appeal said nothing about the injunction affecting or prejudicing the defendants' business and ordinary living. The plaintiffs submitted that the inference to be drawn from all this was that the defendants had been comfortably living off undisclosed assets. Their argument was that if the defendants were freely spending the moneys affected by the Mareva order, this would be an obvious and blatant breach of the Mareva order. If the defendants were not living off the assets affected by the Mareva order, they had to be living off undisclosed assets. The affidavits of assets disclosed the barest of the defendants' assets, which the defendants did not appear to be living off.

The law

34 It is common ground that there is jurisdiction to order a defendant to be cross-examined on a Mareva disclosure affidavit. The test is whether in all the circumstances it is both just and convenient to make the order for cross-examination: see *House of Spring Gardens Ltd v Waite* [1985] FSR 173.

35 The jurisdiction of the court to order disclosure of assets and to cross-examine the defendant on his affidavit of assets is essential to make the Mareva order effective. An order to cross-examine is a form of the court's power to police its orders. On the scope of cross-examination, Slade LJ in *House of Spring Gardens* said at 182:

> I think that the proper scope of the cross-examination envisaged must be regarded as being broadly: (a) to ascertain whether or not the first and second defendants respectively have fully and properly complied with the obligations imposed on them … and (b) in so far as they have not complied with such obligations, to elicit the missing information which should have been supplied but which they have failed to supply.

At the same time, the court should be astute to guard against abuse where the cross-examination is used to extract material on which to build a plaintiff's case for the main action: see *Yukong Line Ltd of Korea v Rendsburg Investments Corporation of Liberia* [1996] TLR 584.

"Just and convenient" – a discretionary balance

36 In applying the "just and convenient" test, the court has to weigh all the circumstances and options available to decide whether the dual requirements are met. I do not propose to cover all the points that have been ventilated in arguments for and against the application. I shall mention what seems to me to be the most pertinent points.

37 Mr Sreenivasan submitted that the plaintiffs' supporting affidavits did not sufficiently set out the grounds of the application for cross-examination. The majority defendants were entitled to know what exactly they had omitted to disclose so as to justify an order for cross-examination. But the plaintiffs, as counsel's argument developed, had made no attempt to request an explanation from the defendants on what they perceived to be deficiencies in the Mareva disclosure affidavits. If they had done so, counsel argued, the majority defendants would have supplied the information. It was not just and convenient to make an order for cross-examination, as the same objective would be achieved by administering interrogatories.

38 The plaintiffs denied that their supporting affidavits were vague as to the grounds of the application to cross-examine. The grounds had been stated, *ie*, the affidavits disclosing the lists of assets were deficient, inadequate and lacking in particulars as to the extent, value, location and details of such assets. The defendants were given notice that the plaintiffs would be referring to the BMR proceedings and the other affidavits filed in these proceedings.

39 The reasons Mr Sreenivasan had put forward are not convincing. Counsel seems to have turned the argument on its head with his submission that the plaintiffs' legal advisers did not, when asked, point out with particularity the deficiencies in the affidavits of assets. The situation here is quite different from a committal application. A person alleged to be in contempt must, in order to defend himself, be able to know with sufficient particularity from the application to commit for contempt what exactly he is said to have done or omitted to do which constitutes a contempt: see *Belgolaise SA v Deepak Lal Purchandani* [1999] Lloyd's Rep Bank 116 at 121.

40 Counsel explained that the majority defendants, who were outside the jurisdiction, had only eight working days to file the affidavits of assets, but they had nevertheless managed to file their respective affidavits on time. Given the constraints of time and circumstances that the majority defendants faced, the affidavits of assets were as comprehensive as could be expected. I have to say that implicit in the submission was some recognition that the respective lists of assets were not in full compliance with the disclosure order. The orders in the Mareva injunction on disclosure of information and under the heading "Exceptions to this Order" were in simple terms. Assisted by their legal advisers, the majority defendants should have been able to understand what was required of them and to decide the completeness of their own disclosure for themselves. I also accept the plaintiffs' argument that many of the defendants, who were subject to a previous Mareva injunction in the BMR proceedings, would have appreciated from that experience the extent of their disclosure obligations. If the majority defendants were so minded, they could have properly augmented their lists of assets in their reply affidavits or at any time right up to the hearing of the plaintiffs' application, which was argued over two days before me.

41 I am in agreement with Mr Sreenivasan that a defendant is not required to incur the expense of obtaining a valuation of his assets. He is only obliged to disclose the value of his assets to the best of his ability: see *Kodak (Australasia) Pty Ltd v Cochran* 1750 of 1996, 1674–1675 of 1996 (4 April 1996), SC (NSW) (unreported). To that extent, in the case of shares in private companies, there is normally no difficulty disclosing the value on a simple net asset basis, as this can be determined from the accounts of the company concerned. A disclosure of the par value of the shares, as some of the majority defendants had done, is not adequate.

42 Counsel argued that it was erroneous to draw the inference that the majority defendants had been living off undisclosed assets simply because they did not account on a weekly basis to the plaintiffs for any assets so disposed of and for the money spent. The Djajanti Group had over 30 companies and their assets were not affected by the Mareva order. The majority defendants were free to have their expenses paid for by other companies in the Djajanti Group, if they wished. I note that Counsel's argument that the defendants might be receiving salaries and/or allowances in cash or from loan arrangements which the majority defendants were not precluded by the Mareva order from entering into was not based on evidence before me. Even if some of the majority defendants were receiving salaries or allowances, they were obliged to disclose them.

43 I am persuaded that the plaintiffs have raised real doubts as to the proper and complete disclosure of assets in the affidavits. Mr Singh has pointed out various inadequacies in the affidavits, which I have already mentioned earlier in this judgment. If indeed there were no assets owned jointly by the defendants and others, or for that matter held by a nominee, the defendants ought to have

said so in their affidavits of assets. They said nothing. A *prima facie* case that other assets had not been disclosed has been made out. The incomplete disclosure that the defendants gave amply justifies my view that an order for cross-examination of the majority defendants and D10 on the affidavits of assets is just and convenient because it might reveal assets that may make the Mareva order more effective. As stated, the ancillary disclosure order is to enable the plaintiffs to know what assets the defendants have. The objective of providing the plaintiffs with the information is to protect the enforcement of any judgment they may ultimately obtain. To that extent, I disagree with Mr Sreenivasan's contention that the cross-examination would not be convenient as it would serve no purpose and be a waste of time, effort and expense.

44 Ms Lim argued that a cross-examination order would render D12's appeal to discharge the Mareva order futile. The other defendants also aligned themselves with this argument as they, too, have an appeal pending. Mr Singh in response said that this same point was canvassed at length before Chao JA.

45 Mr Sreenivasan argued that the majority defendants are foreigners, and where a challenge on grounds of *forum non conveniens* is pending an appeal this court should not force foreign defendants to come to Singapore to be cross-examined at large. It was not suggested anywhere that it would be inconvenient for them to travel to Singapore from Indonesia. The starting point is that the defendants were properly served and had submitted to the jurisdiction of the Singapore court. They had earlier dropped their challenge to the order for service out of jurisdiction of the writ of summons. It bears noting that the majority defendants had also failed to strike out the plaintiffs' action. An application to stay the action on grounds of *forum non conveniens* is not a challenge to the court's jurisdiction, but is one in which the court is invited not to assume or exercise jurisdiction.

46 I accept that an order for cross-examination before the appeal is determined is potentially prejudicial to the defendants. If the defendants are successful in their appeal, they would have been subjected to cross-examination on affidavits of assets which would have been wrongly ordered. Above all, it would not be possible to undo and put right the invasion of their privacy. Damage would have been done if the order for cross-examination had been complied with before the appeal to set aside the order was heard.

47 Whilst the defendants may have some prospect of success on appeal the plaintiffs have, on the other hand, put up a good arguable case on fraud and dissipation of assets. Unfairness lies only in the possibility that the claim may be ill-founded, and I have taken this into account in my assessment of the merits of the plaintiffs' application to cross-examine. If their claim and hence the order for a worldwide injunction turns out to be ill-founded, the defendants will be able to recover their costs and damages suffered, if any, from the undertaking as to damages which the plaintiffs have been ordered to fortify. Weighing all the factors, there are grounds for saying that whilst the prejudice alluded to by Mr Sreenivasan is not illusory, the prejudice to the defendants is of a lesser order than the prejudice that the plaintiffs may suffer if they are unable to police the Mareva order for some time. It is an imposition to subject a defendant to cross-examination, but a Mareva injunction in normal circumstances simply cannot be effective without that disclosure.

48 The disclosure obligation was in standard terms, unlike the wide disclosure orders obtained *ex parte* in *Petromar Energy Resources Pte Ltd v Glencore International AG* [1999] 2 SLR 609. The defendants' affidavits should have contained a proper and full list of assets, and should not have been produced for the sake of meeting a deadline or to serve and operate as a holding affidavit pending determination of the defendants' appeal to set aside the worldwide injunction. There has to be proper compliance before a list of assets can qualify as a comprehensive list. The strategy of using holding affidavits defeats the effectiveness of worldwide Mareva orders. An order to cross-examine the

defendants on their unsatisfactory affidavits of assets for the purpose of identifying their total assets is, in my view, the just and convenient course to take to prevent the defendants from frustrating the object of the Mareva order.

49 I use the expression "holding affidavit" as I am convinced that the defendants had not really tried to properly comply with the disclosure obligation. The majority defendants had cited insufficient time as an excuse. It was a poor excuse. The plaintiffs' review of the affidavits and lists filed showed that the defendants were not treating their disclosure and other obligations under the Mareva order seriously. The majority defendants seemed to have done their best to hedge the situation they faced with minimal compliance whilst waiting for a hearing date for the appeal. The defendants' stance, however foolish it might have been, was nevertheless deliberate. They obviously hoped to "get by" with the holding affidavits. It was not to be, particularly when they had adversaries as resolute as the plaintiffs.

50 I agree with Mr Singh that further affidavits or interrogatories would not be suitable alternatives to cross-examination in a situation such as this, where the defendants' strategy or attitude is to hold out as long as they possibly can until the appeal has been determined. As stated, that sort of strategy or attitude taken will frustrate the objective of the Mareva order.

51 The defendants argued that they have an obligation to disclose their assets as at the date of the disclosure order and the court should not allow cross-examination about dealings which are not recent and which are less likely to lead to undisclosed assets being revealed. The plaintiffs relied on *Deputy Commissioner of Taxation v Hickey* [1996] 33 ATR 453 for the proposition that cross-examination of a taxpayer is allowed on what has happened earlier to very large sums of money (in that case, transferred to New Zealand).

52 All I need to say is this. At present, the significance of prior statements is limited to the weighing of the evidence before me for the purpose of assessing whether it is just and convenient to order cross-examination. In *Deputy Commissioner of Taxation v Hickey* at 456, the court said that there should be no cross-examination of a past transaction if the assets within the jurisdiction are sufficient to satisfy the claim. That was not the situation in this case as disclosed in the affidavits of assets. The disclosure given in the affidavits showed that the defendants had inadequate assets.

53 It is convenient to mention here that the appropriate time to control the scope of examination is at the examination itself. I agree with Mr Sreenivasan that the plaintiffs are not entitled to an order for cross-examination to gather evidence for their substantive action or for a collateral motive. There is no evidence that the application to cross-examine is for a purpose other than to elicit with greater particularity the extent and whereabouts of the defendants' total assets.

54 I turn now to the arguments of Mr Shanker. He had also associated himself with the various points made by Mr Sreenivasan. He did not dispute that D10 was D2's nominee. D2 had admitted transferring shares in his Singapore companies to D10 as his nominee. D10 received those shares but did not disclose any information about the shares held by him as nominee. The plaintiffs complained that D10 had also not disclosed his income or his shareholdings in his own companies. Counsel for D10 explained that no shareholding was disclosed as the companies had been struck off the register. He tendered at the hearing the results of searches carried out at the Registry of Companies (now the Accounting and Corporate Regulatory Authority), which showed that San Marco Impex Pte Ltd, Ocean Supply Pte Ltd, Galmach Impex Pte Ltd, United Machinery Pte Ltd and GK Shrimp Pte Ltd had been struck off the register. The last three companies were struck off on 19 August 2003 and the first two companies on 20 August 2003.

55 Mr Singh noted that the companies had been struck off as recently as August 2003. D10 was a shareholder of the companies and the issue was what had happened to the assets. I accept counsel's argument that the "story did not end with the companies being struck off".

56 As for D10's income, his counsel submitted that there was no obligation to disclose such information. He reasoned that, as a matter of law, salary cannot be garnished and, by the same token, salary cannot be injuncted. Counsel referred me to s 13 of the Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed) and to *American Express Bank Ltd v Abdul Manaff bin Ahmad* [2003] 4 SLR 780.

57 Counsel's contention is unfounded. The Mareva jurisdiction extends to all assets, whether tangible assets or mere choses in action, provided that the defendant is the legal or beneficial owner of them: see *The Practice and Procedure of the Commercial Court* (5th Ed, 2000) at 138. Salary, like fees and commission, is a chose in action and is capable of being caught by an injunction. A monthly salary that is paid into a bank account is caught by an injunction as and when it is paid into the account. Paragraphs (1) and (2) of the Mareva order under the heading "Exceptions to this Order" were aimed at D10's trade income as well as investment income.

58 Counsel for D12 pointed out that the information that Pinkerton Consulting & Investigation Services had relied on was not at all current. The investigators had relied on an article about D12 that was published in 2000. D12 left Singapore after 2001. She was in Singapore for five days in 2002 and visited for 28 days in 2003.

59 D12's counsel argued that her apartment at The Sovereign was sold three years ago in 2001 and that there was no legal obligation to account for past dealings with the sale proceeds. Besides, Lai Siu Chiu J at the *inter partes* hearing to discharge the Mareva injunction obtained in the BMR proceedings was satisfied that D12 did not hold the apartment as nominee for D1. Mr Singh argued that it was the fact of the hasty sale and her failure to come clean with proceeds of sale that distinguished this case from the facts before Lai J. I note that D12's nominee status was an issue raised in these proceedings by different plaintiffs. At this interlocutory application, it is not a matter that I should be overly concerned with.

60 Whilst I am of the view that D12's affidavits of assets are somewhat lacking in details, I agree with her counsel that it would not be just and convenient to subject D12 to cross-examination. D12 is not a party against whom the plaintiffs have a cause of action. D12's case is that the sale was not a sham. However, I am of the view that the whereabouts of the sale proceeds have to be disclosed. The evidence before me shows that the injunction was granted over an asset which was purchased with moneys advanced by D1, the latter having admitted that he paid almost half of the purchase price.

Result

61 For these reasons, I found the balance in favour of cross-examination. I therefore ordered D1 to D6 and D10 to be cross-examined on their respective affidavits of assets. I also ordered Sihombing and D2, who respectively affirmed affidavits of assets on behalf of D7 and for D11 and D13 to D15, to be cross-examined.

62 I ordered D12 to file and serve a further affidavit by 17 June 2004 disclosing the whereabouts of the sale proceeds of the property at The Sovereign as well as to comply with para 2 of the order under the heading "Exceptions to this Order". I granted the plaintiffs general liberty to apply for cross-examination of D12 in connection with the order made against her.

63 I awarded costs of the application to the plaintiffs to be taxed, if not agreed. I also refused the oral application of the majority defendants and D10 to stay enforcement of the order for cross-examination.

Application allowed.

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