IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 248

Suit No 113 of 2018 (Summons No 1488 of 2018)

Between

(1) Sea Trucks Offshore Ltd
(2) Consolidated Projects Ltd
(3) West African Ventures (C.I.) Ltd
(4) Sea Trucks Group Limited (in liquidation)

… *Plaintiffs*

And

(1) Jacobus Johannes Roomans
(2) Mariah Binte Mahat
(3) Al Shouf Trading FZC
(4) Kwong Soon Engineering Company Pte Ltd

… *Defendants*

GROUNDS OF DECISION

[Civil procedure] — [Mareva injunctions] — [Variation of disclosure obligations ancillary to Mareva injunctions]

[Civil procedure] — [Mareva injunctions] — [Filing of affidavit disclosing existence of foreign proceedings brought on the basis of information disclosed]

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v
Roomans, Jacobus Johannes and others

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Andrew Ang SJ
14 May, 8 June 2018

16 November 2018

Andrew Ang SJ:

Introduction

1 This application pertains to the circumstances in which a party subject to a Mareva injunction and the ancillary disclosure obligations within it can apply to the court to limit the said disclosure obligations to the sums restrained by the Mareva injunction.

2 The parties before the court are parties to an underlying suit in the High Court. The plaintiffs had commenced an action against the four defendants for certain payments that were allegedly made wrongfully and sought to recover them. On 28 February 2018, the plaintiffs obtained a Mareva injunction against the first and second defendants which prohibited them from dealing with assets up to a certain value and requiring them to disclose the details of *all* their assets. Pursuant to the Mareva injunction, the first and second defendants filed three

joint affidavits of disclosure, in which they disclosed the details of some, but not all, of their assets. In Summons No 1488 of 2018 ("SUM 1488"), the first and second defendants applied to the court for the following orders:

> (a) that their disclosure obligations under the Mareva injunction be varied on the basis that the assets that they had disclosed were sufficient to meet the sums restrained by the Mareva injunction and thus further disclosure would serve no purpose but would continue to be an intrusion upon their privacy;
>
> (b) that the plaintiffs give certain undertakings not to use the information disclosed for the purposes of civil or criminal proceedings in foreign jurisdictions; and
>
> (c) that the plaintiffs disclose by affidavit whether they had commenced proceedings, used information, sought enforcement of the Mareva injunction or sought an order of a similar nature that would have required leave of the court had the said undertakings been given on the date that the Mareva injunction was issued.

3 After hearing the arguments by the parties on 14 May 2018 and further arguments by the parties on 8 June 2018, I disallowed the application to vary the disclosure obligations under the Mareva injunction. Further, while I agreed with the first and second defendants that it was appropriate to order the plaintiffs to furnish the relevant undertakings, I did not think it was necessary for the plaintiffs to make the disclosure sought by the first and second defendants by way of affidavit. As the first and second defendants have appealed against my decision in respect of the first and third prayers above, I now set out the reasons for my decision. The plaintiffs have not appealed against my decision in respect

of the second prayer and thus I will not address that issue in these grounds of decision.

Facts

The parties

4 The first to third plaintiffs are Sea Trucks Offshore Ltd, Consolidated Projects Ltd and West African Ventures (C.I.) Ltd. They were in the business of providing, amongst other things, marine support services to major oil and construction companies in West Africa since the late 1970s.[1] All three companies were subsidiaries of the fourth plaintiff, Sea Trucks Group Limited (in liquidation), which was placed in liquidation in June 2017 after it defaulted on certain bonds that it had issued to its creditors. The fourth plaintiff currently acts under the direction of its liquidators.[2]

5 The fourth plaintiff had been founded by the first defendant, Jacobus Johannes Roomans, who was a director of the first to third plaintiffs until early 2017 and of the fourth plaintiff from October 2015 to December 2016. He was removed from the board of directors of the fourth plaintiff following its default on the bonds that it had issued. The second defendant, Mariah Binte Mahat, is the first defendant's partner. She too had been a director in the fourth plaintiff and was also ousted from the board in December 2016 as a result of the bond default. It should be noted, however, that the second defendant had confirmed that in spite of her appointment, she had not provided any services for any of the plaintiffs.[3]

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1 Statement of Claim, Amendment No 1, paras 1–2.

2 Statement of Claim, Amendment No 1, paras 5–6.

3 Statement of Claim, Amendment No 1, paras 4–5, 27–28 and 33.

6 The third and fourth defendants, Al Shouf Trading FZC and Kwong Soon Engineering Company Pte Ltd, were companies that were closely related to the first and second defendants and had various dealings with the fourth plaintiff.[4] These companies, however, played no part in the present application, which squarely focused on the disclosure obligations of the first and second defendants.

The underlying claim and the Mareva injunction

7 After the fourth plaintiff was placed in liquidation in June 2017, its liquidators started investigations into the prior acts of the first and second defendants. According to the plaintiffs, it was discovered that the first and second defendants had been engaged in various improper transactions. Pursuant to the liquidators' directions, on 2 February 2018, the first to third plaintiffs commenced Suit No 113 of 2018 against all four defendants, making the following claims.[5]

(a) First, that the first defendant had mismanaged the plaintiffs in breach of his directors' duties and fiduciary duties, in the sense that he had dealt with the assets of the plaintiffs interchangeably with the assets of another company that he owned. In particular, this was of concern to the creditors who held bonds issued by the fourth plaintiff, as they only held security over the assets of the fourth plaintiff and not the company that the first defendant owned.[6]

(b) Secondly, that the defendants had caused the second plaintiff to make inflated payments to the fourth defendant, allegedly to take into

4 Statement of Claim, Amendment No 1, paras 40–45.

5 Plaintiffs' Skeletal Submissions in SUM 2031, para 2.

6 Statement of Claim, Amendment No 1, paras 48(a), 48(e) and 49.

account certain sums to be paid by the fourth defendant to the third defendant under a consultancy agreement, The plaintiffs alleged that the consultancy agreement was a sham and that the defendants needed to return the sums paid.[7]

(c) Thirdly, that the first and second defendants had caused monthly payments to be made to the second defendant and the son of the first and second defendants, despite the fact that neither had contributed to any of the plaintiffs. Although the second defendant had been a director of the fourth plaintiff, she admitted that she did not make any contributions to any of the plaintiffs (see [5] above); and as for their son, he was three years old when he first began receiving monthly payments and obviously could not have contributed to the plaintiffs. The plaintiffs alleged that these sums were paid in order to circumvent the limit on the remuneration that the first defendant could receive from the plaintiffs.[8]

8 It is evident from the foregoing that a large portion of the plaintiffs' claims focused on sums of money paid by one or more of the plaintiffs to one or more of the defendants, and that the central plank of the plaintiffs' claims was that the first and second defendants had been the central movers of the scheme alleged to have been hatched and carried out. In the light of these claims, the issue of the location and details of the first and second defendants' assets becomes critical, because if the plaintiffs had no means of ensuring that the said assets were not moved, then they ran the risk of obtaining nothing more than a paper judgment.

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7 Statement of Claim, Amendment No 1, para 59.

8 Statement of Claim, Amendment No 1, paras 67–73.

9 Although the suit was initially commenced by the first to third plaintiffs, the fourth plaintiff was later added as a party to the suit.[9]

10 On the same day, the plaintiffs filed Summons No 633 of 2018, seeking to obtain an *ex parte* worldwide Mareva injunction against the first and second defendants. On 28 February 2018, I heard the plaintiffs *ex parte* and was satisfied that the requirements for such an injunction were met. I therefore granted the Mareva injunction, under which the first and second defendants were restrained from disposing or dealing with their assets up to the value of US$25,350,328.85 and US$7,385,310 respectively. These sums corresponded to the value of the plaintiffs' claims against them as indicated in the statement of claim. In addition, para 6 of the Mareva injunction required the first and second defendants to disclose all of their assets by way of affidavit. It is helpful to set out para 6 of the Mareva injunction in full:[10]

> Disclosure of information
>
> 6. The 1st and 2nd Defendants must inform the 1st, 2nd and 3rd Plaintiffs in writing at once of all their assets whether in or outside Singapore and whether in their own name or not and whether solely or jointly owned, giving the value, location and details of all such assets. The information must be confirmed in an affidavit which must be served on the 1st, 2nd and 3rd Plaintiffs' solicitors within fourteen (14) days after this order has been served on the 1st and 2nd Defendants.

11 Although para 6 of the Mareva injunction did not specifically identify assets of the first and second defendants to be disclosed, para 3 of the Mareva injunction states that the restraint on the assets of the first and second defendants "includes, without limitation, the following assets":

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9 See Summons No 1128 of 2018 dated 7 March 2018.

10 PBOD filed in SUM 2031, Tab A.

(a) a list of five bank accounts owned by the first defendant and another five bank accounts owned by the second defendant;

(b) a list of 12 companies in which the first defendant had shareholding interest in; and

(c) a list of three real properties owned by the first defendant and another one such property owned by the second defendant.

Thus, it would be expected that the first and second defendants should, at minimum, disclose information relating to these assets.

12 It should also be noted that para 6 of the Mareva injunction corresponds exactly to para 2 of Form 7 of Appendix A of the Supreme Court Practice Directions,[11] which is the standard form in which a Mareva injunction would be issued. In other words, the disclosure obligations that were imposed on the first and second defendants by the Mareva injunction were ordinary and not exceptional. I will return to this point later as it is a significant one in evaluating whether the variation of this disclosure obligation should be granted.

13 The claim documents and the Mareva injunction were served on the first and second defendants on 3 March 2018.[12]

Initial partial provision of information by the first and second defendants

14 On 12 March 2018, the first and second defendants' lawyers wrote to the plaintiffs' lawyers, stating, amongst other things, that the terms of the disclosure order within the Mareva injunction were "too wide and ought to be limited to information on all assets whether in or outside Singapore amounting

[11] PBOD filed in SUM 2031, Tab D, p 76.

[12] Plaintiffs' Skeletal Submissions in SUM 2031, para 7.

to [the sums claimed in the statement of claim]". They therefore asked if the plaintiffs were agreeable to a variation of the disclosure obligation to this effect.[13] This proposal was rejected by the plaintiffs' lawyers on 14 March 2018 on the basis that limiting the assets to be disclosed in this manner would render the Mareva injunction "pyrrhic and ineffective".[14]

15 Faced with the plaintiffs' refusal, the first and second defendants had no choice but to file an affidavit in order to comply with their disclosure obligations. Their first joint affidavit dated 19 March 2018 was thus filed on 20 March 2018,[15] although it should be noted that the said affidavit was initially sworn on 17 March 2018 and sent to the plaintiffs' lawyers on 19 March 2018.[16] That initial version of the affidavit was discovered to have contained certain errors, which required the revised affidavit filed on 20 March 2018 to rectify.[17]

16 The first joint affidavit disclosed information pertaining to the first and second defendants' assets in 13 bank accounts, which included all ten of the bank accounts listed in para 3 of the Mareva injunction (see [11] above). The affidavit also disclosed information pertaining to three real properties owned by the first and second defendants, which, however, only included one of the four properties listed in para 3 of the Mareva injunction as being subject to the restraint. It was evident from the face of the affidavit that there had been no information disclosed by the first and second defendants in relation to the 12

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13 DBOD filed in SUM 1488 (Further Arguments), Tab 4, Second Joint Affidavit of the first and second defendants dated 3 April 2018, pp 20–21.

14 DBOD filed in SUM 1488 (Further Arguments), Tab 4, Second Joint Affidavit of the first and second defendants dated 3 April 2018, pp 22–23.

15 DBOD filed in SUM 2031, Tab 2.

16 PBOD filed in SUM 2031, Tab E, p 100.

17 Defendants' Skeletal Submissions in SUM 1488, para 13.

companies that the first defendant had shares in and the three real properties owned by the first defendant in the Netherlands and Nigeria.

17 No attempt was made by the first and second defendants to explain why they did not provide information in relation to the 12 companies and three real properties even though these assets were specifically listed in para 3 of the Mareva injunction as being subject to the restraint. Instead, the first and second defendants simply stated in the affidavit that further information would need to be obtained, coupled with an assurance that an update would be provided to the court and to the plaintiffs "as soon as possible":

> 3. … Since the time [the Mareva injunction] was served on us, we have been gathering information on our assets to answer the Freezing Injunction. It has been a time-consuming process and we set out in the affidavit our assets, as far as we have been able to determine at this point in time. *When further information is available we will update this Honourable Court.*
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> 7. … We will provide an update by affidavit when we receive information from the banks from which we have yet to hear on our bank balances at the date of this affidavit. We are also ascertaining if we have any other assets that are to be disclosed pursuant to the Freezing Injunction and *we will provide this Honourable Court and the Plaintiffs' solicitors with an update as soon as possible.*
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> [emphasis added]

18 On 19 March 2018, the plaintiffs' lawyers responded to the initial version of the first joint affidavit that had been sent to them. They inquired about the shares and real property that had been identified in para 3 of the Mareva injunction but did not feature in the affidavit, and asked for the reasons for the non-disclosure of the information pertaining to these assets.[18]

19 The first and second defendants' lawyers replied on 22 March 2018, stating their belief that there was no further utility to disclosing further

[18] PBOD filed in SUM 2031, Tab D, p 85.

information about their assets, given that they had already disclosed assets of more than US$35m in value, which exceeded the sums restrained by the Mareva injunction. It is helpful to set out the relevant parts of that letter in full:[19]

> 2. … It is clear from the said joint affidavit that our clients have disclosed assets of more than US$35million in value which is greater in aggregate value or amount than required to in the Freezing Injunction. If there is any doubt on the sufficiency of assets disclosed by Mr Roomans, our clients are prepared to file a further affidavit that the monies in the joint accounts may be used to satisfy any judgment against Mr Roomans that your clients may obtain in the above-captioned proceedings.
>
> 3. Our clients' position is that the purpose of the order to disclose assets is to ensure that the asset value of the Freezing Injunction is kept in a steady state. The amounts disclosed by our clients have satisfied this purpose and, consequently, our clients regard the purpose of the disclosure order to be satisfied. We therefore invite your clients to agree to a variation of the Freezing Injunction to the effect that upon disclosing assets to the value referred to in the Freezing Injunction (i.e. USD25,350,328.85 in respect of the 1st Defendant and USD7,385,310.00 in respect of the 2nd Defendant), no further obligation is imposed on our clients to declare any additional assets.

20 While the issue of the undisclosed information pertaining to the shares and real property owned by the first defendant was not directly addressed, it was clear that the first and second defendants considered that they did not need to disclose this information despite the assets being specifically named in para 3 of the Mareva injunction. Further, similar to the assurance made in the first joint affidavit, another assurance was given in this letter to the effect that the first defendant would be prepared to file a further affidavit stating that the assets were sufficient to meet any judgment that could be obtained by the plaintiffs.

21 Unsurprisingly, the plaintiffs' lawyers replied on 23 March 2018 in a strongly-worded letter, stating that it was not for the defendants to "unilaterally

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[19] PBOD filed in SUM 2031, Tab D, p 86.

decide how much disclosure of their assets to provide" given the express scope of the disclosure obligation within the Mareva injunction. They noted that the first and second defendants' failure to disclose was "not by reason of inadvertence or the constraint of time or circumstance, but by choice", and thus the plaintiffs were left "with little choice but to take the necessary steps to enforce the Freezing Injunction".[20]

Summons to vary the first and second defendants' disclosure obligations

22 There was no further reply to this letter. Instead, it appears that having been faced with the prospect of an application for committal by the plaintiffs, the first and second defendants then filed SUM 1488 on 28 March 2018 seeking to vary their disclosure obligations. In their second joint affidavit dated 3 April 2018 filed in support of SUM 1488, the first and second defendants also made clear what had previously been implicit: that while they were under an obligation to disclose all their assets,[21] they chose not to do so because "no further purpose would be served by [them] disclosing any assets beyond the values stated in the Freezing Injunction".[22] Further, in respect of the properties listed in para 3 of the Mareva injunction, the first and second defendants took the position that the injunction did not compel them to "disclose specifically [their] properties in Nigeria and the Netherlands".[23]

23 I should point out that the position taken by the first and second defendants here appears to be at odds with the assurances that they had given in

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20 PBOD filed in SUM 2031, Tab D, p 88.

21 DBOD filed in SUM 1488 (Further Arguments), Tab 4, Second Joint Affidavit of the first and second defendants dated 3 April 2018, para 8.

22 DBOD filed in SUM 1488 (Further Arguments), Tab 4, Second Joint Affidavit of the first and second defendants dated 3 April 2018, para 9.

23 DBOD filed in SUM 1488 (Further Arguments), Tab 4, Second Joint Affidavit of the first and second defendants dated 3 April 2018, para 19.

the first joint affidavit and in the letter dated 22 March 2018, in the sense that if the first and second defendants took the position that they did not need to disclose further information given that the purpose of the Mareva injunction had been met, then there would be no need for them to assure the court and the plaintiffs of future updates of information pertaining to their other assets. Instead, the absolute position taken by the first and second defendants in this affidavit is consonant with the views expressed in their letters dated 12 and 22 March 2018, in which the first and second defendants had repeatedly asked for a consensual variation of the disclosure obligations such that they would not need to disclose any further information about their assets. I shall return to this point later.

24 SUM 1488 was fixed for hearing on 14 May 2018. In the interim period, the plaintiffs' lawyers wrote to the defendants' lawyers on 27 April 2018, indicating that the plaintiffs intended to file an application to cross-examine the first and second defendants in respect of the first joint affidavit because the information disclosed therein was not adequate or meaningful. The plaintiffs also noted that despite the assurance of further updates given in the first joint affidavit, no such update had been given despite more than a month having passed since the first joint affidavit was filed.[24]

25 Seemingly in response to this letter, the first and second defendants filed a fourth joint affidavit on that very day and sent it to the plaintiffs on 30 April 2018.[25] In the affidavit, the first and second defendants explained that they had attempted to ask for more information from their banks about their other bank accounts by email but were told that they needed to call the bank instead. And although their personal secretary had since attempted to do so, the bank's

[24] DBOD filed in SUM 1488, Tab 10, p 6.

[25] DBOD filed in SUM 1488, Tab 10, p 8.

customer service officer was still unwilling to provide this information.[26] While email correspondence between the first and second defendants and the bank officer was exhibited in the affidavit, no evidence was produced to show that they had followed up with a phone call. Nor was there an affidavit deposed by the secretary who had allegedly contacted the banks to state that she had taken such steps to obtain further information.

26 The plaintiffs were clearly dissatisfied with this explanation. On 30 April 2018, they filed Summons No 2031 of 2018 ("SUM 2031") seeking to cross-examine the first and second defendants on the first joint affidavit. This summons was fixed to be heard before me together with SUM 1488.

27 On 14 May 2018, I heard both summonses. I granted the plaintiffs' application in SUM 2031 to cross-examine the first and second defendants. In respect of SUM 1488, I ordered the plaintiffs to furnish undertakings to the effect that they would not use any information disclosed for the purpose of civil or criminal proceedings in foreign jurisdictions; the plaintiffs did so by way of an affidavit deposed by one of the fourth plaintiff's liquidators dated 18 May 2018, although it was stated that the undertakings were given with effect from 14 May 2018.[27] However, I did not grant the first and second defendants' application for a variation of their disclosure obligations. I also did not grant the first and second defendants' oral application to have full disclosure made by a new deadline to be determined by the court, because to do so would be to impliedly bless the previous breaches of the disclosure order. Instead, I left it to the plaintiffs to take the necessary action to enforce the order of court that would be extracted as a result of my decision.[28]

[26] DBOD filed in SUM 1488 (Further Arguments), Tab 6, Fourth Joint Affidavit of the first and second defendants dated 27 April 2018, para 10.

[27] See Fifth Affidavit of Chad Griffin dated 15 May 2018 and filed on 18 May 2018, para 3.

Subsequent provision of information by the first and second defendants in stages

28 Pursuant to my decision, the first and second defendants' lawyers wrote to the plaintiffs' lawyers on 17 May 2018 stating that the first and second defendants would "at once" observe their disclosure obligations. This promise to comply was, however, subject to two qualifications:

(a) disclosure would only be made "on terms of strict confidence and on the terms of the undertakings ordered by the Learned Judge on [the first and second defendants'] application"; and

(b) the first and second defendants would undertake a global search on their other assets and would disclose the results of the search by correspondence, but these disclosures would only be "aggregated together at convenient stages on affidavit". The letter then disclosed a "customer overview from HSBC" which was said to have been received by the first and second defendants on 16 May 2018.[29]

29 On the same day, the first and second defendants' lawyers also wrote in to the court to ask for further arguments in respect of the variation of their disclosure obligations. They explained that the first and second defendants had "struggled with an absolute, unconditional order on the one hand and their own view that the court would recognize that once sufficient assets had been identified and an assurance given to the court that they would not be dealt with or disposed, the purpose of the Freezing Injunction would be met and they would be released from further disclosure".[30] The letter further confirmed that

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28 See Statement of the plaintiffs filed pursuant to the summons for committal, para 18.

29 PBOD filed in SUM 2031, Tab F, p 392.

30 Letter to the court dated 17 May 2018, para 6.

there were no encumbrances on the disclosed bank accounts, and whilst there were mortgages on the property disclosed, the value of the assets still exceeded the sums that were restrained by the Mareva injunction, even taking into account the sum of the mortgages.[31] The request for further arguments was granted and fixed to be heard on 8 June 2018.

30 On 19 May 2018, the first and second defendants' lawyers made a second disclosure of information by letter, stating that the first and second defendants held shares in one Jamaro Development Company and one Jamaro Capital Limited. The statements of share capital annexed to the letter as proof were correct only as at 24 November 2014, which is the date on which the first defendant had signed off on these documents.[32]

31 On the same day, the plaintiffs' lawyers replied, rejecting the first and second defendants' approach of disclosing their assets in stages. In particular, the plaintiffs' lawyers noted that the first defendant had recently gone through or was at that time going through divorce proceedings, and would thus have had a "current overview" of his assets.[33] It should be noted that this allegation was never contested by the first and second defendants, and indeed, the financial statement that had been sworn by the first defendant in September 2016 in relation to the divorce proceedings was subsequently obtained and exhibited by the plaintiffs in an affidavit dated 25 June 2018.[34] The plaintiffs then followed up this letter by filing Summons No 2323 of 2018 on 21 May 2018, in which they sought leave to commence committal proceedings against the first and

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31 Letter to the court dated 17 May 2018, para 15.

32 PBOD filed in SUM 2031, Tab F, pp 383–390.

33 PBOD filed in SUM 2031, Tab F, pp 381–382.

34 Affidavit of Ong Xuan Ning Christine dated 25 June 2018, p 19 *et seq* (see p 58 for signature and date).

second defendants. The parties continued corresponding on 22 and 24 May 2018, each restating the same positions that they had taken prior.[35]

32 On 23 May 2018, the first and second defendants filed Summons No 2402 of 2018, seeking leave to appeal to the Court of Appeal against my decision in relation to the variation application. It was not entirely clear why they had filed this summons since their previous application for further arguments had already been granted and was slated to be heard on 8 June 2018. Indeed, the first and second defendants eventually withdrew this application after I queried them on this at the hearing. A separate summons for leave to appeal was later filed after the hearing of 8 June 2018, at which I confirmed my earlier decision made on 14 May 2018.

33 Before I heard the parties on 8 June 2018, however, the first and second defendants filed their sixth joint affidavit on 4 June 2018.[36] They placed on affidavit the information pertaining to their assets that had been disclosed in the two letters dated 17 and 19 May 2018, together with further information about a bank account with DBS Bank Ltd that had not previously been disclosed. The assets disclosed in the sixth joint affidavit can be summarised as follows.

(a) A bank account with HSBC Bank (Singapore) Limited, which had been identified in the letter dated 17 May 2018 (see [28] above). In addition to the customer overview dated 16 May 2018, an additional account statement dated 7 May 2018 was included as an exhibit.

(b) The first and second defendants' shares in Jamaro Development Company and Jamaro Capital Limited, which had been identified in the letter dated 19 May 2018 (see [30] above).

35 PBOD filed in SUM 2031, Tab F, pp 375–378; p 380.

36 PBOD filed in SUM 2031, Tab E, p 349 *et seq*.

(c) A bank account with DBS Bank Ltd, as evidenced by a statement summarising the first and second defendants' unit trusts. Significantly, the statement was dated 31 March 2018,[37] which meant that the first and second defendants had in their possession this information during the period in which the parties had exchanged correspondence in relation to the issue of disclosure. But the information relating to this bank account was never disclosed until this sixth joint affidavit.

34 At the hearing on 8 June 2018, the first and second defendants relied not only on their first and sixth joint affidavits, but also tendered a draft affidavit that had not yet been sworn and filed, which set out the following information:[38]

(a) the first and second defendants' shareholdings in nine companies, eight of which had been listed in para 3 of the Mareva injunction. However, no estimate of the value of the shares was given;

(b) the first and second defendants' confirmation that they were not the owners of one of the four properties listed in para 3 of the Mareva injunction, although this still left two properties in the Netherlands for which information had not been disclosed; and

(c) details of a three bank accounts that the first and second defendants held with Citibank, Switzerland.

35 The verifying documents pertaining to these assets, however, were variously dated between 2009 and 2015 and were thus, although this draft affidavit provided more information about the first and second defendants'

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37 PBOD filed in SUM 2031, Tab E, p 366.

38 DBOD filed in SUM 2031, Tab 3.

assets, the information provided did not reflect their assets as at the date which the variation was sought, *ie*, May and June 2018.

36 The first and second defendants relied on all three affidavits during the further arguments on 8 June 2018 and subsequently filed the draft affidavit on 13 June 2018.[39]

37 I also note that during this period, from March to June 2018, the first and second defendants had indicated their intention to use some of the assets that had been disclosed by them for their ordinary expenses and legal fees. In particular, the first and second defendants informed the plaintiffs that they intended to pay their lawyers various sums which totalled about $440,000 as professional fees for the present proceedings, despite the matter still being at the interlocutory stage.[40] They also indicated that they would draw money from their bank accounts – the first defendant $20,000 per week and the second defendant $10,000 per week for the months of April and May 2018.[41]

Other summonses filed by the first and second defendants after the further arguments on 8 June 2018

38 After my decision on 8 June 2018, the first and second defendants continued to take out further applications in respect of the present case. Most pertinently, the first and second defendants filed Summons No 2873 of 2018 on 21 June 2018, seeking to have the entire Mareva injunction set aside on the basis that, *inter alia*, the courts of Nigeria were the most appropriate courts to hear the plaintiffs' claims and to be asked to issue a worldwide Mareva injunction. In the same vein, on 29 June 2018, the first and second defendants filed

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39 DBOD filed in SUM 2031, Tab 3.

40 Affidavit of Ong Xuan Ning Christine dated 25 June 2018, p 61 *et seq*.

41 PBOD filed in SUM 1488, Tab H.

Summons No 2975 of 2018, in which they sought to stay the underlying proceedings in favour of the courts of Nigeria on the ground of *forum non conveniens*.

39 I note that these summonses were filed after I had made my decision at the hearing of 8 June 2018, and to that extent, they are not strictly relevant in my consideration of the present application. I mention them, however, to give a complete picture of the procedural skirmishes that have taken place between the parties up until the date of these present grounds of decision. It is against this backdrop that I turn to consider the parties' contentions.

The parties' cases

40 I heard the parties on 14 May 2018 and then on 8 June 2018 for further arguments at the request of the first and second defendants. The first and second defendants, who were the applicants in respect of the application to vary their disclosure obligations, made the following arguments.

(a) The purpose of a Mareva injunction is to preserve sufficient assets to satisfy any judgment obtained. Thus, where a Mareva injunction is qualified by stating the maximum sum that can be restrained, it follows that the disclosure order must also be qualified to the same extent, especially since such a disclosure order is by its very nature an invasion of a defendant's privacy.[42]

(b) In the present case, the purpose of the Mareva injunction was fulfilled when the first and second defendants disclosed assets in excess of the maximum sums indicated in the Mareva injunction. Further

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42 Defendants' Skeletal Submissions, para 21; Defendants' Skeletal Submissions for Further Arguments, paras 15–16.

disclosure would serve no purpose and would instead be oppressive to them.[43]

(c) The first and second defendants did not agree with the plaintiffs' submission that they had deliberately failed to disclose the full extent of their assets. Instead, the first and second defendants contended that they were "doing their very best under the circumstances"[44] and that the plaintiffs instead were behaving disingenuously by attempting to saddle the defendants with unrealistic disclosure obligations.[45]

41 In response, the plaintiffs made the following submissions.

(a) Even where a Mareva injunction is limited to maximum sums, full disclosure of assets is still necessary because a Mareva injunction confers no security upon the plaintiff over the assets. Thus, if a defendant discloses only up to the amount that is restrained by the Mareva injunction, there may ultimately be insufficient funds to satisfy the judgment if the disclosed assets turn out to be encumbered or spent pursuant to the exceptions in the Mareva injunction.[46] This interest in ensuring that justice is done as between the parties overrides any concerns pertaining to a defendant's right to privacy.[47]

(b) In the present case, the first and second defendants had refused to comply with the clear terms of the disclosure obligations within the Mareva injunction. Instead, in order to neuter the effectiveness of the

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43 Defendants' Skeletal Submissions, paras 15–16.

44 Defendants' Skeletal Submissions for Further Arguments, para 2.

45 Defendants' Skeletal Submissions for Further Arguments, paras 19–22.

46 Plaintiffs' Skeletal Submissions, paras 25–26.

47 Plaintiffs' Skeletal Submissions for Further Arguments, para 24.

Mareva injunction, they employed a "drip-feeding" strategy[48] by filing joint affidavits of disclosure that slowly revealed the existence of their assets even though the said assets had been known to them all along. Such a strategy has been roundly condemned by courts in previous cases and should also not be endorsed in the present case.[49]

Issues to be determined

42 There are two issues which will be addressed in these grounds of decision, which correspond to the first and third prayers in SUM 1488.

(a) First, whether the first and second defendants' disclosure obligations within the Mareva injunction dated 28 February 2018 should be varied, such that the first and second defendants need not disclose information about any assets once they have disclosed assets sufficient to meet the sums restrained by the Mareva injunction.

(b) Secondly, whether the plaintiffs, who had been directed to furnish undertakings to the effect that they would not use the disclosed information for the purposes of civil and criminal proceedings in foreign jurisdictions, should nevertheless be required to disclose by affidavit whether they have done so thus far.

43 I will address each in turn.

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48 Plaintiffs' Skeletal Submissions for Further Arguments, para 19.

49 Plaintiffs' Skeletal Submissions, paras 18–24.

My decision in relation to the disclosure obligations

Whether a defendant who discloses assets with a value equivalent to or more than the restrained sum is entitled to a variation of his disclosure obligations

44 In the main, the first and second defendants' submission is that once a party who is subject to a Mareva injunction has disclosed assets sufficient to meet the sum restrained by the injunction, then any further disclosure would not serve the purpose of the injunction but would, instead, continue to be a restriction on that party's right to privacy. In these circumstances, the first and second defendants argued that such a party should be entitled to a variation of the disclosure obligations to the effect that no further disclosure of assets would be required.

45 I did not agree with this submission. A Mareva injunction aims to prevent a defendant from dissipating his assets and thus rendering nugatory a judgment which might eventually be obtained by a plaintiff against him. It does so, however, not by way of giving a plaintiff security or a proprietary interest over the defendant's assets, but simply by restraining the said assets from being moved (see *Lee Shieh-Peen Clement and another v Ho Chin Nguang and others* [2010] 4 SLR 801[50] at [17] and [26]). Because the plaintiff is given no interest, security or priority in any of the assets, the only way to allow the plaintiff to effectively police the Mareva injunction is by giving him sufficient information about the location and details of the defendant's assets, so that he can determine whether the defendant has been moving his assets in breach of the Mareva injunction. It is for this reason that the disclosure order, although ancillary to the Mareva injunction itself, has been described by the Court of Appeal to be "an integral part of the court's Mareva jurisdiction and an ordinary adjunct to a Mareva injunction" (see *Bouvier, Yves Charles Edgar and another v Accent*

[50] PBOA Tab 2.

Delight International Ltd and another and another appeal [2015] 5 SLR 558 ("*Bouvier*")[51] at [101]).

46 Even in a situation where the defendant has disclosed assets sufficient to meet the sums restrained by the Mareva injunction, there is still utility in requiring the defendant to disclose information pertaining to the defendant's other assets. It is well-established that the information disclosed by the defendant by way of affidavit in such situations is often "rough and ready", in the sense that the value of the assets is often estimated rather than forensically prepared under microscopic scrutiny (*Bouvier* at [103]). This is because, as the Court of Appeal explained in *Bouvier*, such a disclosure affidavit is usually compiled and filed under stringent timelines (at [103]). Under such circumstances, it would be unrealistic to expect that the value of the defendant's assets, as listed in the disclosure affidavit, would be so close to the true value of the defendant's assets, such that it can be said with confidence that no other assets are required to be disclosed in order to preserve the efficacy of the Mareva injunction.

47 Indeed, I note that in further arguments, the first and second defendants had themselves relied on *Bouvier* and the Court of Appeal decision of *Wallace Kevin James v Merrill Lynch International Bank Ltd* [1998] 1 SLR(R) 61 ("*Wallace*")[52] for the proposition that a "realistic" approach must be taken in relation to the disclosure of assets by the defendant, in the sense that the value of the assets in the affidavit is often "rough and ready".[53] While the first and second defendants had made this point in the context of explaining why they did not make full disclosure of their assets in their first joint affidavit (which is

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51 DBOA Tab 4.

52 DBOA (Further Arguments) Tab 5.

53 Defendants' Skeletal Submissions for Further Arguments, para 4.

a point I will deal with below), in my view this proposition was equally pertinent to the question of whether disclosure obligations should be discontinued once the defendant has filed an affidavit disclosing assets which were just enough to meet the sum restrained by the Mareva injunction.

48 To illustrate the point, I refer to the assets disclosed in the present case. In their first joint affidavit, the first and second defendants disclosed a bank account with Citibank Switzerland that was said to be held solely in the name of the first defendant. The account balance was stated as US$1,770,044.53 and no encumbrances were identified on the said account.[54] However, in the draft affidavit that was placed before me at the hearing on 8 June 2018 and which was later filed on 13 June 2018 (see [34] above), it was revealed that the funds in the Citibank account were extended pursuant to an "On Demand Credit Facility Agreement" dated 2 April 2015, under which Citibank could demand repayment at any time and, in the meantime, had a security interest over the assets in the bank account.[55] Although this information was known to the first and second defendants at the time they filed the first joint affidavit, it was not disclosed. Thus, even if the sums in the Citibank account had been sufficient to meet the sums restrained by the Mareva injunction, the existence of such undisclosed encumbrances would have meant that the Mareva injunction would have been deprived of a substantial part of its efficacy. This illustrates the situation which I have explained above: that at best, the disclosure affidavit is a "rough and ready" estimate of the value of the assets which may not truly reflect their true value. Indeed, as the present facts illustrate, there could well also be situations in which a defendant, while disclosing the existence of the assets, deliberately omits to mention the encumbrances on the said assets. In either

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54 DBOD filed in SUM 2031, Tab 2, para 6, item 8.

55 See exhibit JM-19 to the draft affidavit, cll 8 and 14.

situation, it would not be safe to free a defendant from the obligation to disclose all his other assets just because the assets in the disclosure affidavit appear, on their face, to meet the sums restrained by the Mareva injunction.

49 Further, it is often the case, as is the situation on the present facts (see [37] above), that the Mareva injunction would contain exceptions which allow the defendant to use some of the restrained sums of money towards ordinary expenses and legal fees. So if the defendant only discloses assets that are equal in value or slightly above that restrained by the Mareva injunction, then the use of monies for the purposes of ordinary expenses and legal fees could reduce the value of the assets disclosed to a value below that which had been restrained by the Mareva injunction, further reducing its efficacy.

50 In the light of these uncertainties inherent in situations of partial disclosure, I agreed with the plaintiffs that the disclosure obligations of the first and second defendants should not be attenuated even in such situations, in order to preserve the efficacy of the Mareva injunction.

51 It was also no answer for the first and second defendants to say that requiring them to make further disclosure of their assets would unjustifiably impinge on their right to privacy or confidentiality. As the Court of Appeal explained in *Bouvier* in the context of a similarly wide disclosure obligation, the "highly intrusive" nature of such an absolute obligation is tolerated because without an accompanying disclosure obligation, a Mareva injunction will "often be toothless" (at [102]).

52 Because a wide disclosure obligation is typically required to give a Mareva injunction teeth, such widely-phrased disclosure obligations are the norm rather than the exception, and have even been described as being the

"standard terms" on which a disclosure order ancillary to a Mareva injunction is made (see *OCM Opportunities Fund II, LP and others v Burhan Uray (alias Wong Ming Kiong) and others* [2004] 4 SLR(R) 74 ("*OCM Opportunities*")[56] at [48]). Indeed, as I have noted at [12] above, the standard form disclosure order, as contained in para 2 of Form 7 of Appendix A of the Supreme Court Practice Directions, requires a defendant to disclose *all* his assets, even though the substantive terms of the Mareva injunction in the same standard form only restrain the assets of the defendant up to the sum that is reasonably claimed by the plaintiff in the underlying proceedings. This shows that as a general rule, a defendant will be required to make disclosure of *all* his assets even though the assets restrained are limited to those of a certain value.

53 In contrast, it has only been in cases where the disclosure obligations go *further* than requiring the defendant to disclose all his assets that the court has found such obligations to be overly onerous. In *Wallace* (see *supra* [47]), the Court of Appeal held that the disclosure obligations were "totally unjustified" because they not only required the appellant to disclose all his assets, but also required him to give his consent for his bankers to provide "any information" to the respondent upon request (at [34]). Similarly, in *Petromar Energy Resources Pte Ltd v Glencore International AG* [1999] 1 SLR(R) 1152 ("*Petromar*"), the Court of Appeal concluded that disclosure obligations requiring the defendant to disclose all its assets *and* to specifically disclose information pertaining to certain specific items of assets were "far too wide and extensive to be made at such an early stage" of the proceedings (at [17]). These cases demonstrate that it is only in situations where the disclosure order has imposed obligations over and above what is necessary to police the Mareva injunction that the court has stepped in to attenuate the disclosure obligations. But as I have explained, this

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[56] PBOA Tab 1.

concern does not apply to situations of partial disclosure given the inherent uncertainties arising from the "rough and ready" information provided in such situations.

54 For the foregoing reasons, I do not accept the first and second defendants' contention that they were entitled to a variation of the disclosure obligation simply by virtue of having disclosed assets in their first joint affidavit that appeared to have met the sums restrained in the Mareva injunction.

55 This does not mean, however, that a defendant's disclosure obligations in the context of a Mareva injunction can *never* be attenuated. There may well be circumstances which call for such a variation, for instance if it can be shown that the plaintiff is using the disclosure order not for the purpose of policing the Mareva injunction, but for an extraneous purpose such as to obtain information to support the plaintiff's other claims against the defendant (see *Petromar* at [21]). In the present case, however, the first and second defendants did not allege that the plaintiffs had such an extraneous purpose in demanding that the first and second defendants fully disclose their assets, and in any event, I was of the view that the plaintiffs' request for information pertaining to the first and second defendants' assets was entirely *bona fide*. Indeed, for the reasons that follow, I was not convinced that the circumstances of this case called for the first and second defendants' disclosure obligations to be attenuated. To the contrary, I found that the first and second defendants had been evasive and uncooperative in their compliance with their disclosure obligations and should thus be required to make full disclosure of their assets. I turn to this next.

Whether the first and second defendants were otherwise entitled to a variation of their disclosure obligations

56 The first and second defendants accepted that para 6 of the Mareva injunction imposed an "absolute" and "unconditional" obligation on them to disclose information pertaining to all their assets (see [29] above). Despite acknowledging this, it can be seen from the detailed chronology of events that I have set out above that they had consciously chosen not to comply with the disclosure order because they did not think it was necessary to do so.

57 Against this, the first and second defendants contended that they had tried their best to obtain information of their assets but had been unable to do so. I did not accept this explanation. It was evident from the conduct of the first and second defendants that their actions were as a result of choice and not circumstance. The key facts in this regard are the following.

(a) First, the first and second defendants had repeatedly taken the position that there was no further utility that could be obtained by disclosing more information about their assets, given their belief that the purpose of the Mareva injunction had been met: see for instance the letter of 22 March 2018 (at [19] above) and the second joint affidavit filed in support of SUM 1488 (at [22] above).

(b) Secondly, the conduct of the first and second defendants is consonant with the position that they had expressed. In their first joint affidavit, the first and second defendants failed to even provide information pertaining to the assets that had been specifically identified in para 3 of the Mareva injunction as being subject to the terms of the injunction (see [16] above). While more information was eventually furnished by way of the draft affidavit, this information was still

incomplete: for instance, no information was provided as to the real properties located in the Netherlands (see [34(b)] above). The natural inference arising from the non-disclosure of such information coupled with the statements made by the first and second defendants in the documents was that they were unwilling, rather than unable, to provide the said information.

(c) Thirdly, it is true that the first and second defendants had made assurances that they would provide the court and the plaintiffs with more information (see the first joint affidavit at [17] above and the letter of 22 March 2018 at [20] above) and had eventually explained in their fourth joint affidavit that they had attempted to contact their banks but had been rebuffed (see [25] above). In my view, however, these assurances and explanations rang hollow. The assurances which had been given in the first joint affidavit and the letter of 22 March 2018 were not acted upon until the plaintiffs made clear in their letter of 27 April 2018 that if no further information or explanation was provided, they would apply to cross-examine the first and second defendants on their first joint affidavit (see [24] above). It was only when faced with the spectre of cross-examination that the first and second defendants filed their fourth joint affidavit explaining the situation. And even then, the explanation given was, in my view, unsatisfactory. No evidence was adduced to show that the first and second defendants had followed up on the email that they had sent to their banks on 14 March 2018. And although the first and second defendants explained that their personal secretary had called the banks but had been rebuffed, no affidavit was filed by the said secretary explaining how or why the bank officers had rejected the inquiries and whether further steps had been taken in that regard. Further, this explanation appears to contradict the

documentary evidence. For instance, in the sixth joint affidavit that was filed on 4 June 2018, the first and second defendants exhibited a bank statement from an account with DBS Bank Ltd that was dated 31 March 2018 (see [33(c)] above), indicating that this bank statement had been in their possession at the time the first and second defendants were claiming ignorance, but had not been disclosed. It was thus not a case where the first and second defendants had no information in their possession that could be disclosed despite trying their best to obtain this information.

58 Taking the evidence in the round, I was unable to accept the first and second defendants' contention that they had tried their best to comply with their disclosure obligations but were prevented from doing so. My conclusion in this regard also comports with the nature of the claims that had been made by the plaintiffs in this case. As I noted at [8] above, the plaintiffs in essence claimed that the first and second defendants had sowed a conspiracy against the plaintiffs, had used the third and fourth defendants to carry out this conspiracy, and had reaped the benefits of the conspiracy in the form of the payments made by the plaintiffs to the defendants. The assets of the first and second defendants thus became critical to the enforcement of any judgment that may be obtained by the plaintiffs in the suit and this may explain why the first and second defendants were reluctant to disclose the location and the details of their assets.

59 In fact, even after the court had decided on 14 May 2018 that the disclosure obligations would not be varied, the first and second defendants continued to "drip-feed" the court and the plaintiffs with snippets of information. In the meantime, they held out for the possibility that their fates would take a turn for the better, either by way of further arguments to this court (which were to be heard on 8 June 2018), or by way of an appeal to the Court

of Appeal, which is why an application for leave to appeal had been filed even before the further arguments were heard (see [32] above). I should also note that while this information was not available to the court at the time of the hearings of 14 May 2018 and 8 June 2018, it can be seen from the events following 8 June 2018 that the first and second defendants had taken further steps to reverse their fortunes, for instance by applying to discharge the entire Mareva injunction or to stay the underlying proceedings in favour of the courts of Nigeria (see [38] above). Again, it was likely that this was the approach taken by the first and second defendants because they did not wish to open their assets to the plaintiffs in the event that the plaintiffs prevailed in the underlying suit, but this did not make their approach legitimate.

60 Turning back to the strategy of "drip-feeding", while the first and second defendants purported to comply immediately with their disclosure obligations under para 6 of the Mareva injunction, they insisted that they would only be prepared to state the location and details of their assets on affidavit in stages and at their own convenience (see [28] above). Thus, although they provided the court and the plaintiffs with further information about their assets on three separate occasions, on each occasion it was clear that the information provided only served to provide minimal compliance with their disclosure obligations. I mention just four instances.

(a) First, while the first and second defendants had disclosed a HSBC bank account in their letter dated 17 May 2018 (see [28(b)] above), the only information provided in relation to the assets contained within it was a customer overview dated 16 May 2018, which provided limited information. But subsequently, in their sixth joint affidavit dated 4 June 2018, when the first and second defendants finally disclosed information pertaining to this bank account by way of affidavit, it turned

out that there was an additional supporting document for this account – a bank account statement dated 7 May 2018 (see [33(a)] above). This bank account statement would have been available to the first and second defendants at the time they sent the letter of 17 May 2018, but clearly, they had chosen not to disclose it.

(b) Secondly, the same technique was employed in relation to the DBS bank account that was disclosed by the first and second defendants in their sixth joint affidavit dated 4 June 2018 (see [33(c)] above). The first and second defendants had held a bank account statement in respect of this account since 31 March 2018 but chose not to disclose it until 4 June 2018.

(c) Thirdly, in respect of the first and second defendants' shareholdings in Jamaro Development Company and Jamaro Capital Limited that were also disclosed in the sixth joint affidavit dated 4 June 2018 (see [33(b)] above), only the names of the companies and the number of shares the first and second defendants held were disclosed. But no information was disclosed, for instance, as to where these companies were incorporated, which was a critical piece of information which would have been necessary for the plaintiffs to monitor compliance with the Mareva injunction. Counsel for the first and second defendants also admitted that he did not possess this information when I queried him on this during the hearing of 8 June 2018. Further, the documents filed in support of this disclosure pertained to the statements of share capital and returns of allotment as of 2014, which would not have necessarily reflected the sums that had actually been paid up by the first and second defendants, nor would it have necessarily reflected their shareholdings as of the date of the application. It was thus clear to me

that even where information about the assets had been disclosed, the first and second defendants had chosen to disclose the minimum information necessary to comply with their disclosure obligations, but had chosen to leave out crucial aspects of that information, with the result that the plaintiffs were hamstrung in their ability to police the Mareva injunction.

(d) Finally, apart from the information that had been disclosed but was incomplete, I also note that some information had in fact not been disclosed at all. For instance, it appeared that the first defendant had, in September 2016, filed a financial statement for a financial order in divorce proceedings in London. That financial statement contained information pertaining to certain properties and shares that were being held by the first defendant. But despite being in possession of such information since September 2016, neither this information nor the financial statement was disclosed to the court by the first and second defendants. It was only when the *plaintiffs* subsequently obtained this information that it was disclosed to the court in an affidavit filed by the plaintiffs on 25 June 2018 (see [31] above).

61 Such a strategy is not new. A similar strategy of filing "holding affidavits" was criticised in *OCM Opportunities* (see *supra* [52]). In that case, the plaintiffs obtained a worldwide Mareva injunction against the defendants which contained similar standard form disclosure obligations. The plaintiffs complained that the defendants did not comply with their disclosure obligations as their affidavits of assets were incomplete and lacking in particulars. They thus applied to cross-examine the defendants on their affidavits. Agreeing with the plaintiffs, Belinda Ang Saw Ean J held that (at [48]–[49]):

> 48 The disclosure obligation was in standard terms … 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*. …
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> 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.
>
> [emphasis added]

62 Belinda Ang J granted the plaintiffs' application to cross-examine the defendants because she was of the view that while the defendants had filed affidavits of assets, they were not seriously trying to comply with their obligations and instead only filed the affidavits to stave off the court-imposed deadline while waiting for a hearing date for an appeal. Belinda Ang J did not endorse this strategy of deliberately using a "holding affidavit" in place of proper compliance.

63 Although *OCM Opportunities* pertained to a situation where the plaintiffs sought to cross-examine the defendants, in my view, the same analysis relating to the strategy of "holding affidavits" could apply in the present case. As I have concluded above, the first and second defendants had consciously chosen not to comply with their "absolute, unconditional" obligations under para 6 of the Mareva injunction. And even after the court order of 14 May 2018 was made, they had chosen to continue to file "holding affidavits" to, in Belinda

Ang J's words, "hedge the situation they faced with minimal compliance" (see *OCM Opportunities* at [49]) whilst waiting for their fortunes to turn around. Like Belinda Ang J, I was of the view that this strategy ought not to be endorsed, lest the efficacy of Mareva injunctions and the disclosure obligations contained within them be undermined.

64 For the foregoing reasons, I found that the first and second defendants had not been serious in complying with their disclosure obligations and had instead been evasive and uncooperative in doing so. In the circumstances, there was no reason to grant the first and second defendants a variation of their disclosure obligations to the effect that they no longer needed to disclose any further information about their assets.

My decision in relation to the need for the plaintiffs to disclose by affidavit whether they had used the information obtained

65 I now turn to briefly set out my reasons for declining the first and second defendants' application for an order that the plaintiffs depose an affidavit to declare whether they had used the information disclosed by the first and second defendants from the date of the Mareva injunction until the date that the undertakings were given. I had agreed with the first and second defendants that it was appropriate for the plaintiffs to furnish undertakings not to use the information for the purposes of civil or criminal proceedings in foreign jurisdictions. The plaintiffs furnished the relevant undertakings on in an affidavit dated 18 May 2018, but which were to take effect from 14 May 2018 (see [27] above). Thus, the only proceedings that would have been disclosed in any such affidavit to be filed by the plaintiffs would be in relation to information that had been disclosed by the first and second defendants prior to 14 May 2018 (*ie*, in their first joint affidavit).

66 However, the preponderance of information that had been disclosed by the first and second defendants in their first joint affidavit pertained to assets that had already been known to the plaintiffs and were therefore specifically listed in para 3 of the Mareva injunction. So even if the plaintiffs had commenced proceedings by relying on their prior information of such assets of the first and second defendants, these proceedings would not have been commenced pursuant to information that had been obtained as a result of the first and second defendants' disclosure of information. It was thus not necessary for me to require the plaintiffs to set out the existence and details of such proceedings in an affidavit. Indeed, although there have been numerous hearings since my decision on this issue on 14 May 2018, the first and second defendants have not alleged that there have been any new proceedings commenced by the plaintiffs using the information that had been disclosed in their first joint affidavit. This only serves to confirm my conclusion that such an affidavit was not necessary.

67 Further, I note that the existence and details of other parallel proceedings had already been set out in detail by the first and second defendants themselves in their second joint affidavit dated 3 April 2018 filed in support of SUM 1488.[57] It was thus clear to me that in any event, the first and second defendants have had ample knowledge of the existence of such proceedings. In these circumstances, it was not necessary to order the plaintiffs to file such an affidavit.

Conclusion

68 In summary, I dismissed the first and second defendants' application to vary their disclose obligations for the following reasons.

[57] DBOD filed in SUM 1488 (Further Arguments), Tab 4, Second Joint Affidavit of the first and second defendants dated 3 April 2018, paras 32–34.

(a) Disclosure obligations which require a defendant to disclose all his assets are essential to the operation of a Mareva injunction, because this is the only way in which a plaintiff can police a defendant's compliance with the terms of the injunction.

(b) This reasoning continues to apply even where a defendant has, by way of affidavit, appeared to disclose assets which are sufficient to meet the maximum sums restrained by the Mareva injunction. This is because affidavits of disclosure often do not reflect the true value of the assets disclosed, and it would thus not be safe to discharge further disclosure obligations purely on that basis.

(c) Nevertheless, there may be situations in which a defendant should be granted an attenuation of his disclosure obligations, including but not limited to a situation in which a plaintiff has used the information obtained by the disclosure orders for extraneous purposes.

(d) There were no circumstances which called for such an attenuation in the present case. To the contrary, the first and second defendants had been evasive and uncooperative and had not seriously tried to comply with their disclosure obligations. And even after the court had declined to vary their disclosure obligations on 14 May 2018, they continued to "drip-feed" the court and the plaintiffs with "holding affidavits". In such circumstances, the first and second defendants should not be allowed an attenuation of their disclosure obligations. While the first and second defendants may have been reluctant to disclose information about the location and details of their assets to the plaintiffs given the nature of the claims made, this did not mean that their approach was legitimate.

69 I further dismissed the first and second defendants' application for an order that the plaintiffs disclose the existence of proceedings on affidavit because the preponderance of information disclosed in the first joint affidavit of the first and second defendants had disclosed information that was already known to the plaintiffs, and in any event, the first and second defendants had ample knowledge of the existence of these proceedings.

Andrew Ang
Senior Judge

Daniel Chia and Christine Ong (Coleman Street Chambers LLC) for the plaintiffs;
Teh Kee Wee Lawrence, Ravin Periasamy and Chan Wai Yi Kevin (Dentons Rodyk & Davidson LLP) for the first and second defendants;
Third and fourth defendants unrepresented and absent.