

Spectramed Pte Ltd v Lek Puay Puay & others
[2010] SGHC 112

Case Number : Suit No 681 of 2009/B (Summons No 4169 of 2009/K)
Decision Date : 14 April 2010
Tribunal/Court : High Court
Coram : Chan Seng Onn J
Counsel Name(s) : Lai Yew Fei and Melissa Marie Tan Shu Ling (Rajah & Tann LLP) for the plaintiff;
Chan Kia Pheng and Sharon Lin (KhattarWong) for the first, second and fourth
defendants.
Parties : Spectramed Pte Ltd — Lek Puay Puay & others

Injunctions – Mareva injunction

14 April 2010

Chan Seng Onn J:

Introduction

1 This is the plaintiff's application for a Mareva injunction against the first, second and fourth defendants' assets in Singapore. I granted the application on 10 March 2010.

Background

The parties

2 The plaintiff is a company incorporated in Singapore on 3 May 2006 and is engaged in the business of distributing scientific and precision equipment for use in the medical and cosmetic surgery market. The third defendant was an administrator with the plaintiff from 3 December 2007 to 11 November 2008.

3 The first defendant was the managing director of the plaintiff from 27 June 2006 to 24 November 2008 and a director of the plaintiff from 27 June 2006 to 13 August 2009. She has been a 48% shareholder of the plaintiff from 24 January 2007. The other 52% of the shares in the plaintiff is held by one Jasmine Goh ("Jasmine") as nominee for one David Loo ("David") and one Rosie Tang ("Rosie"). David and Rosie are the founders of the plaintiff. David was concurrently the shareholder and director of another company call Innomed Pte Ltd ("Innomed").

4 The second defendant is the first defendant's husband. He worked for the plaintiff as a marketing manager from 23 August 2007 to 30 May 2008.

5 The second defendant incorporated the fourth defendant on 5 May 2008 and is its sole director and shareholder. The fourth defendant is in the same business as the plaintiff and has signed contracts with the plaintiff's ex-customers, in particular, one Shin Han Eni ("Shin Han") and one Sybaritic Inc ("Sybaritic").

The management of the plaintiff's business

6 Jasmine was the chairman of the plaintiff's board of directors. Previously, two signatures were required to operate the plaintiff's bank account – Jasmine's and the first defendant's. In January 2007, Jasmine relocated to France and the signatory to the plaintiff's bank account was changed so that the first defendant could sign singly without Jasmine. Thereafter, the first defendant was left to run the plaintiff's business by herself with occasional input from David and Rosie.

7 On 27 January 2008, David wrote an e-mail to the first defendant requesting monthly updates on the plaintiff's bank statements and business activities, as well as quarterly submissions of the plaintiff's profit and loss statements. The first defendant agreed to this in her reply e-mail of 28 January 2008. However, the plaintiff claims that this was not carried through and that between May and November 2008, the first defendant refused to provide Jasmine, David and Rosie with the plaintiff's accounts, list of employees and documents concerning the plaintiff's distributorship agreements.

8 In January 2008, the plaintiff secured the exclusive right to distribute, in Singapore, Shin Han's "Eraser-C" and "Co Cell" CO2 laser systems, both of which are used for skin treatment. On 26 June 2008, Sybaritic appointed the plaintiff as the exclusive distributor of "NannoLight" and "TRIO Skin Tightener" machines in Singapore from 1 June 2008 to 31 December 2009 with the option to extend to 31 December 2011. Both exclusive distributorship agreements were eventually terminated by Shin Han and Sybaritic.

Suit 681 of 2009/B

9 In Suit 681 of 2009/B ("S681"), the plaintiff claims that the first and second defendants have acted dishonestly and in breach of their fiduciary and contractual duties to the plaintiff. Additionally, the plaintiff has brought claims against the first and second defendants for dishonest assistance in breach of each other's fiduciary duties to the plaintiff. The plaintiff also alleges knowing receipt of the plaintiff's assets by the second and fourth defendants. It is the plaintiff's position that the fourth defendant was set up as a vehicle in a scheme hatched by the first and second defendants to divert the plaintiff's business, customers, suppliers and contracts to the fourth defendant.

10 The plaintiff cites, *inter alia*, the following allegations to support its claim:

(a) The defendants dishonestly concealed from David, Rosie and Jasmine the existence of the exclusive distributorships from Shin Han and Sybaritic and the written agreements.

(b) The defendants dishonestly concealed from David, Rosie and Jasmine the resignation of the second defendant, the incorporation of the fourth defendant by the second defendant and the diversion or risk of diversion of the plaintiff's business and contracts to the fourth defendant.

(c) The defendants dishonestly misappropriated the plaintiff's exclusive distributorships of Shin Han's and Sybaritic's products and diverted them to the fourth defendant.

(d) In August 2008, the managing director of Sybaritic, one Mr Jory Steinman ("Steinman") was scheduled to visit the plaintiff. However, the first defendant e-mailed the third defendant on 11 August 2008 and instructed her to bring Steinman to the fourth defendant's office instead of the plaintiff's office. On 21 August 2008, Steinman arrived at the plaintiff's office and the first and second defendants brought him to the fourth defendant's office instead.

(e) The plaintiff has been distributing products of Medro Medical Division Co Ltd ("Medro Medical") since March 2007. However, on or about 19 August 2008, the first defendant e-mailed

Mr John Park of Medro Medical to direct all future purchases to the fourth defendant. The e-mail states:

Dear John,

Thank you for accepting my proposal. In future, all buying will be under the new company.

Please amend the proforma Invoice to the following address and Company Name:

Absolute MS (S) Pte Ltd

[address of the 4th defendant]

As for right now, we will correspondence thru SpectraMed email but once the NEW Company email posted.

Have a Nice evening.

With Best Regards

Samantha

(f) The defendants repeatedly stonewalled David, Rosie and Jasmine when they chased the first defendant for the plaintiff's accounts, list of employees, customer list, human resource records and details of the plaintiff's distributorships with Shin Han and Sybaritic.

(g) From 6 June 2008 to 27 August 2008, the first and second defendants procured the plaintiff to sell some its products to the fourth defendant at prices which were lower than the prices at which the plaintiff had sold the same products to its other customers. The fourth defendant then sold these products to end purchasers at a higher price.

(h) Whilst a N3 licence from the National Environment Agency and approval from the Centre for Radiation Protection and Nuclear Science ("CRPNS") were required for the sale, commissioning and servicing of laser equipment in Singapore, the first and second defendants did not apply for this licence on behalf of the plaintiff. Instead, they applied for the N3 licence and CRPNS approval in the name of the fourth defendant.

(i) The plaintiff had eight employees in March 2008 but this number fell to two by July 2008. The first defendant informed David about this only on 5 September 2008 when she told David that the plaintiff no longer had any employees. The first defendant did not recruit new staff or seek the technical staff that the plaintiff required to provide after sales service. The plaintiff asserts that the first defendant was not interested in recruiting new staff for the plaintiff because she wanted the plaintiff to lose its distributorships to the fourth defendant.

(j) The first defendant spent little time at the plaintiff's office whilst she was still a director of the plaintiff and allowed the third defendant to provide administrative support to the fourth defendant whilst she was still an employee of the plaintiff.

(k) Even after the second defendant had resigned, the first defendant made the plaintiff apply and pay for season parking for the second defendant's vehicle for 1 July 2008 to 30 September 2008 at the building where the plaintiff's office was located.

11 The defendants, on the other hand, claim that, pursuant to an agreement between Rosie and David on the one part and the first defendant on the other part, the plaintiff's business was to be run by the first defendant without interference from David and Rosie. The plaintiff disputes the existence of such an agreement. The defendants also allege wrongful and oppressive acts of David, Rosie and Jasmine. The defendants submit that David, Rosie and Jasmine were not acting in the best interests of the plaintiff and were instead pursuing their own interests and/or that of Innomed at the expense of the plaintiff. In those circumstances, the defendants claim that the first defendant's withholding of information from David, Rosie and Jasmine, failure to employ replacement staff for the plaintiff and failure to procure fresh distributorships for the plaintiff were justified. The defendants explain that the sale of the plaintiff's assets to the fourth defendant and the first defendant's failure to apply for a N3 licence on behalf of the plaintiff occurred because the plaintiff did not have any technical staff that could provide after-sales services to the plaintiff's customers. Rather, the defendants claim that the fourth defendant was set up to provide technical after-sales service, repair and maintenance for the plaintiff, *i.e. to be the plaintiff's dealer* and *not* to take over the plaintiff's business or to compete with the plaintiff. The first defendant has instituted a claim in Suit No 829 of 2009/R against David, Rosie, Jasmine and the plaintiff for, *inter alia*, minority shareholder oppression and breach of contract.

The application for a Mareva injunction

12 At the hearing of the application for a Mareva injunction, the plaintiff pointed out that, in addition to the allegations listed above (at [\[10\]](#)), on 3 June 2008, the first defendant had made the plaintiff pay for a rubber stamp that the second defendant had made with the fourth defendant's name. The second defendant's name on the invoice from the rubber stamp maker was covered up to conceal this fact. The plaintiff submitted that the defendants' repeated instances of fraudulent misappropriation of the plaintiff's assets demonstrate a lack of probity on the part of the defendants. The plaintiff feared that the defendants would dissipate their assets, particularly the assets of the fourth defendant, in the event that judgment is entered against them in S681. The quantum in respect of which the plaintiff sought a Mareva injunction was a sum of S\$2,013,229. This amount is the plaintiff's estimate of what would be awarded to it if an account of the defendants' profits and damages to be paid by the defendants are ordered in S681.

13 The defendants pointed out that they have done nothing to dissipate their assets since the hearing of plaintiff's application for an *ex parte* Mareva injunction on 25 August 2009 and submitted that this shows that the defendants do not have the disposition or propensity to dissipate their assets. Moreover, the defendants claimed that the plaintiff had not established a good arguable case against them. The defendants argued that their alleged wrongful acts must be viewed in context. The defendants claimed that the first defendant was justified, and had acted *bona fide*, in not taking on fresh distributorships and hiring new staff for the plaintiff in view of the uncertainty of the future of the plaintiff's business arising from the alleged oppressive conduct of David, Rosie and Jasmine.

Decision

14 To successfully apply for a Mareva injunction, the plaintiff must show:

(a) a valid cause of action over which the court has jurisdiction;

(b) a good arguable case;

(c) that the defendant has assets within or outside the jurisdiction; and

(d) a real risk of the assets being disposed of or dissipated so that any judgment which the plaintiff may obtain cannot be enforced.

(*Bahtera Offshore (M) Sdn Bhd v Sim Kok Beng and Another* [2009] 4 SLR(R) 365 at [13])

15 I found that the plaintiff has a valid cause of action and a good arguable case. I was also satisfied that the defendants have assets which can be the subject of a Mareva injunction.

16 The main issue in the present case was whether there was a real risk of dissipation of assets by the defendants. The test is whether “the refusal of a Mareva injunction would involve a real risk that a judgment or award in favour of the plaintiffs would remain unsatisfied” (*Ninemia Maritime Corporation v Trave Schiffahrtsgesellschaft mbH (The Niedersachsen)* [1984] 1 All ER 398 at 419, quoted with approval in *Guan Chong Cocoa Manufacturer Sdn Bhd v Pratiwi Shipping SA* [2003] 1 SLR(R) 157 at [17]). The test is an objective one and there is no need to show an intention to dissipate assets. However, a mere possibility or unsupported fear of dissipation is insufficient and what is required is “solid evidence” of a risk of dissipation of assets (*Choy Chee Keen Collin v Public Utilities Board* [1996] 3 SLR(R) 812). This “solid evidence” may take a number of forms. As illustrated by Mustill J, whose judgment at first instance was upheld on appeal in *The Niedersachsen* [1983] 2 Lloyd’s Rep 600 at 606-7:

It is not enough for the plaintiff to assert a risk that the assets will be dissipated. He must demonstrate this by solid evidence. This evidence may take a number of different forms. It may consist of direct evidence that *the defendant has previously acted in a way which shows that his probity is not to be relied on*. Or the plaintiff may show what type of company the defendant is (where it is incorporated, what are its corporate structure and assets, and so on) so as to raise an inference that the company is not to be relied on. Or again, the plaintiff may be able to found his case on the fact that inquiries about the characteristics of the defendant have led to a blank wall. Precisely what form the evidence may take will depend on the particular circumstances of the case. But the evidence must always be there. [emphasis added]

17 The defendants in *Multi-Code Electronics Industries (M) Bhd and another v Toh Chun Toh Gordon and others* [2009] 1 SLR(R) 1000 (“*Multi-Code*”) were alleged, in the main suit, to have conspired to defraud the plaintiffs. A Mareva injunction was granted as against the defendants and they applied for the discharge of the injunction. Having examined the documentary evidence, the court found, in that case, that the plaintiffs clearly had more than an arguable case against the first and fourth defendants. The probity, honesty and integrity of the first and fourth defendants in *Multi-Code*, their trustworthiness and reliability to engage in fair dealing had been called into question by the claim against them based on their participation in a conspiracy to defraud such that the risk of dissipation of assets was no longer in the realm of mere possibility or imagination but was very real. On the special facts of *Multi-Code*, the court refused to lift the Mareva injunction as there was a real risk of dissipation of assets.

18 In *Patterson v BTR Engineering (Aust) Ltd and others* (1989) 18 NSWLR 319, the New South Wales Court of Appeal dismissed an appeal to set aside a Mareva injunction in circumstances where the respondent had alleged that the appellant had interposed a private company (which was controlled by the appellant) between the respondent and certain overseas suppliers, fraudulently procured the overpayment by the respondent for equipment purchases and derived secret profits from

those transactions. The court dismissed the application to set aside the Mareva injunction on the ground that the evidence as to the nature of the scheme in which the appellant was allegedly involved established a *prima facie* case against him such as to justify the conclusion that there was a danger that the appellant would dispose of assets in order to defeat any judgment that might be obtained against him and that such danger was sufficiently substantial to warrant the injunction.

19 From the cases cited above, it is clear that allegations of dishonesty are relevant to the issue of whether there is a risk of dissipation of assets. If there is a *good arguable case* in support of an *allegation* that the *defendant has acted fraudulently, dishonestly or unconscionably*, it is *unnecessary for there to be any further specific evidence on risk of dissipation* for the court to be entitled to take the view that there is a sufficient risk to justify granting Mareva relief (see Stephen Gee, *Mareva Injunctions and Anton Piller Relief* (Sweet & Maxwell, 4th ed, 1998 ("Stephen Gee") at 198).

20 I found that, in the present case, the plaintiff has established a *prima facie* case in S681, that the defendants have dishonestly misappropriated the plaintiff's assets such that a risk of dissipation of assets by the defendants existed and this warranted the grant of a Mareva injunction over the defendants' assets.

21 In deciding whether there is a real risk of dissipation of assets, the court may also consider the nature of the defendant's assets and whether such assets are easily moved (Stephen Gee at 195). I asked the defendants to furnish evidence as to the type of assets they hold. Apart from two motor vehicles, a HDB flat and the fourth defendant company itself (which the defendants submitted has an annual turnover of S\$1 million), the defendants' remaining assets consist of monies in bank accounts and unit trusts. These are assets that can be easily moved. Moreover, the plaintiff submitted that there is a possibility that the defendants would transfer the distributorships and goodwill of the fourth defendant to another company, in the same manner as they are alleged in S681 to have done to the plaintiff's business. Whilst the defendants pointed out that no dissipation of assets has occurred since August 2009, I noted that this was pursuant to an undertaking that the first, second and fourth defendants had given to the court at the hearing on 25 August 2009 not to dissipate assets pending the disposal of the plaintiff's application for a Mareva injunction.

Conclusion

22 Accordingly, I granted the Mareva injunction against the first, second and fourth defendants on their assets, whether in their respective own names or not and whether solely or jointly owned, up to the value of S\$600,000. The first and second defendants are not prohibited from spending S\$750 a week each towards their ordinary living expenses and incurring reasonable legal fees on legal advice and representation. Before spending any money exceeding \$1,500 on an item, the first and second defendants must state to the plaintiff's solicitors in writing where the source of money is to come from. The fourth defendant is not prohibited from dealing with or disposing of any of its assets in the ordinary and proper course of business provided that the fourth defendant shall account to the plaintiff every first day of the month for the amount of money spent in this regard. Costs were ordered to be in the cause.