

**IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

[2023] SGHC 206

Originating Application No 652 of 2023

Between

ILC Co, Ltd

... Applicant

And

- (1) Saitama Hiroshi
- (2) Hora Yohei
- (3) Asia Capital Management Pte Ltd
- (4) Oshima Yumiko

... Respondents

JUDGMENT

[Civil Procedure — Mareva injunctions — Leave to commence committal proceedings]

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ILC Co, Ltd
v
Saitama Hiroshi and others

[2023] SGHC 206

General Division of the High Court — Originating Application No 652 of 2023

Choo Han Teck J

25 July 2023

1 August 2023

Judgment reserved.

Choo Han Teck J:

1 The applicant has a pending civil claim against the 1st and 2nd respondents for US\$6,718,925.11 and the 3rd and 4th respondents for US\$194,031.23. On 27 February 2023, the applicant obtained a Mareva injunction to enjoin them from dissipating their assets up to the value of the claim. As in most Mareva orders, the respondents were also ordered to file affidavits disclosing their assets. This is an ancillary order to the injunction. It is necessary because respondents sometimes do not have ostensible assets sufficient to cover the plaintiff's claim.

2 In this case, the orders were served on the 3rd and 4th respondents, but not on the 1st and 2nd respondents. The 3rd and 4th respondents in compliance with the main injunction, set aside the sum claim in a separate bank account and agreed to have that account frozen pending the conclusion of the suit. But they

did not file the affidavit disclosing their assets. It was for this breach that the applicants sought leave to commence committal proceedings against those respondents.

3 Counsel for the applicant argues that as a general rule, a respondent is required to make disclosure of all its assets even though the assets restrained are limited to those of a certain value (*Sea Trucks Offshore Ltd and others v Roomans. Jacobus Johannes and others* [2019] 3 SLR 836 (“*Sea Trucks*”) at [52]). This is a general, not an immutable, principle. The case of *Sea Trucks* counsel raises is clearly different from the present situation. In *Sea Trucks*, the court reasoned that “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 respondent’s assets, so that he can determine whether the respondent has been moving his assets in breach of the Mareva injunction”. It is for this reason that the disclosure order becomes “an integral part of the court’s Mareva jurisdiction and an ordinary adjunct to a Mareva injunction”. In contrast, the 3rd and 4th respondents here have set aside the full judgement sum in a separate bank account that is currently frozen by the Development Bank of Singapore. The 3rd and 4th respondents have undertaken not to utilise these sums as part of the exceptions to the Mareva order. That should be sufficient to assuage the applicant’s worries of the judgement sum that is being sought from the 3rd and 4th respondents being dissipated.

4 Committal proceedings require leave of court. Counsel for the applicant submits that at the leave stage, all that is necessary to obtain leave is for the applicant to establish a *prima facie* case of contempt (*BMP v BMQ* [2014] 1 SLR 1140 (“*BMP*”) at [13], [18]-[19]; *Mok Kah Hong v Zheng Zhuang Yao* [2016] 3 SLR 1 (“*Mok Kah Hong*”) at [57]-[58]). Counsel submits that the court should not “venture into the merits of the substantive committal application”. I

agree with counsel. Although the court need not evaluate the merits for committal at this stage, it must be satisfied that on the assumption that the breach is proved and there is no reasonable excuse for the breach, leave may be granted, but not otherwise. And in this regard, it may be necessary to examine the justification and purpose of the application for leave. This is a necessary part of the procedural safeguards behind applying for leave — the court “will not simply rubber-stamp an application for leave to apply for an order of committal”, and “the leave procedure should not be used as a tool for oppression” (*BMP* at [18]).

5 It is only through a consideration of the justification and purpose behind a party’s application that the court will be able to disallow abuses of process. In cases of a breach of a Mareva order, the mere fact that disclosure was not given, though strictly a breach, does not mean that leave must necessarily be given. In this case, the application was made to enforce the disclosure order. But the question, given the basis of a Mareva injunction, is whether the disclosure is still necessary.

6 A Mareva injunction is an intrusive and exceptional order. It is an urgent remedy to a party who may find his claim in threat of vanishing even before he can begin the court process because the respondent has shown signs that he is dissipating his assets to put them out of the applicant’s reach. That is why a Mareva injunction is usually granted on an urgent, *ex parte* basis, as in this case.

7 Once it is clear that the applicant’s claim is secured, there is no basis for the disclosure order. A disclosure order pursuant to a Mareva application is different from a disclosure order made in the course of interlocutory proceedings because the latter is governed by considerations of relevance of the information sought strictly for the purposes of the suit. It is part of the

interlocutory process. The disclosure order pursuant to a Mareva injunction is strictly to ensure that there is no concealment or dissipation of assets. The two basis must not be mixed up. If a plaintiff has already secured the full amount of his claim, persisting in the disclosure of assets at that point is excessive — and may even be an abuse of process.

8 Counsel for the applicant submitted that it has reasonable suspicions that the 3rd and 4th respondents “are also likely to be holding substantial assets for” the 1st respondent. It is in the applicant’s favour that the four respondents within the applicant’s claim are connected, and that the applicant’s claims against the 1st and 2nd respondents exceed the amount secured by the 3rd and 4th respondents. I will therefore grant leave against the 3rd and 4th respondents, and leave it to the 3rd and 4th respondents to show that they have no connection to the rest of the applicant’s claim beyond the US\$194,031.23 that they have set aside pursuant to the Mareva order.

9 The applicant also seeks leave to commence committal proceedings against the 1st and 2nd respondents for non-compliance with the terms of the same Mareva injunction granted in favour of the applicant. Counsel for the applicant argues that leave should be granted, notwithstanding that service of the Mareva order remains pending on the 1st and 2nd respondents. This is because the 1st and 2nd respondents have had fair notice of the Mareva order made against them, and thus have had knowledge of the Mareva order they must comply with. Based on evidence provided of multiple instances of service to the currently active emails of the 1st and 2nd respondents, and other evidence showing that the 1st and 2nd respondents are well aware of the proceedings against them, I accept counsel’s argument. I find this to be an appropriate case and thus exercise my discretion under O 7 r 1(2) of the Rules of Court 2021 to

“dispense with personal service”. I thus grant the applicant permission to bring committal proceedings against the 1st and 2nd respondents as well.

10 Costs reserved.

- Sgd -
Choo Han Teck
Judge of the High Court

Ang Leong Hao and Ashwin Kumar Menon (Rajah & Tann
Singapore LLP) for the applicant;
Joshua Ng Wei Kit (Focus Law Asia LLC) for the 3rd and 4th
respondents (watching brief).
