IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2021] SGCA 26

Civil Appeal No 21 of 2020 (Summonses Nos 132 and 133 of 2020)

Between

JTrust Asia Pte Ltd

… *Appellant*

And

(1) Group Lease Holdings Pte Ltd
(2) Mitsuji Konoshita
(3) Cougar Pacific Pte Ltd
(4) Aref Holdings Limited
(5) Adalene Limited
(6) Bellaven Limited
(7) Baguera Limited
(8) Yoichi Kuga

… *Respondents*

JUDGMENT

[Civil Procedure] — [Mareva injunctions] — [Post-judgment Mareva injunctions]
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Court of Appeal — Civil Appeal No 21 of 2020 (Summonses Nos 132 and 133 of 2020)
Steven Chong JCA and Quentin Loh JAD
25 March 2021

26 March 2021 Judgment reserved.

Steven Chong JCA (delivering the judgment of the court):

Introduction

1 This decision concerns two issues relating to Mareva injunctions which may arise *after* final judgment has been pronounced by the court. First, it sets out the requirements to obtain a *post-judgment* Mareva injunction. Second, it sets out the conditions that must be met before a plaintiff who has obtained a worldwide Mareva injunction may be released from the undertakings furnished to the court in order to commence enforcement proceedings in other jurisdictions.

2 CA/SUM 132/2021 ("SUM 132") is the appellant's application to extend the duration of a worldwide Mareva injunction against the first respondent ("R1") and a domestic Mareva injunction against the second

respondent ("R2"). The appellant also seeks disclosure of R1's and R2's assets worldwide, and to be relieved of certain undertakings that it had given to the court. CA/SUM 133/2021 ("SUM 133") is an application by R1 and R2 to reduce the enjoined quantum of the Mareva injunctions from US$180 million to US$72 million, though in their submissions, they seek to further reduce the quantum to US$34 million on the basis that it is undisputed that around US$38 million has already been paid to the appellant.

3 After considering the parties' respective submissions, we order that the Mareva injunctions be extended until the respondents satisfy the judgment debt and costs that they owe to the appellant. However, we reduce the enjoined sum to US$50 million, for the reasons set out below. Despite the reduction in quantum, we observe that the assets disclosed and valued by R1 and R2 in their affidavits are still objectively insufficient to meet this quantum as we have found the valuation to be inflated or not sufficiently proved. In light of this, the respondents are not to deal with these disclosed assets since their aggregate value appears to be worth less than the enjoined quantum. It is therefore also appropriate to order R1 and R2 to file a fresh affidavit of disclosure within three weeks of this judgment, listing out their assets up to the collective value of US$100 million. The disclosure of R1's and R2's assets up to US$100 million is not to be confused with the sum of US$50 million enjoined under the Mareva injunctions – see [61] below. Any valuation of assets so disclosed must be properly supported and not based on incomplete, arbitrary, or subjective belief. The respondents are forewarned that in dealing with or disposing of their assets in the belief that those assets are in excess of the enjoined quantum of US$50 million, they bear the risk that they may be found to be in contempt if it subsequently transpires that the preserved assets are worth less than US$50 million. Finally, we disallow the appellants from being released from

their undertakings, but if they wish to commence proceedings elsewhere, they may apply to court for leave. We now set out our reasons for our various orders.

Procedural History

4 The appellant brought proceedings against the respondents for deceit and conspiracy in HC/S 1212/2017 ("the High Court Trial"). While proceedings were pending, worldwide Mareva injunctions were granted against R1 and the third respondent ("R3"), while a domestic Mareva injunction was granted against R2, up to the total quantum of US$180 million. Subsequently, the High Court dismissed the appellant's claim. The appellant appealed and pending the appeal, this court reinstated the worldwide Mareva injunction against R1 and the domestic Mareva injunction against R2, but did not reinstate the Mareva injunction against R3. The reinstated Mareva injunctions were ordered to be in place pending the final determination of the appeal or further order.

5 On 6 October 2020, this court reversed the High Court's decision and found the first to seventh respondents liable for the torts of deceit and conspiracy. The first to seventh respondents were ordered to be jointly and severally liable to the appellant for the total sum of US$70,006,122.49 and S$131,817.80 (collectively, the "Judgment Sum"). Thereafter, we also: (a) awarded the appellant S$155,000 as costs of the appeal (including disbursements); and (b) ordered costs of the High Court Trial to be taxed on a standard basis with a certificate for three counsel, to be paid to the appellant by R1, R2, and the fourth to seventh respondents, jointly and severally.

6 On 2 November 2020, this court extended the reinstated Mareva injunctions by 60 days but agreed to reduce their quantum to an unencumbered value of US$72 million, *provided that* an affidavit was filed by R1 and R2 within 14 days to identify the asset(s) forming the unencumbered value of the

same. Subsequently, an affidavit was filed on behalf of R1 and R2, but the appellant wrote to court disputing that the value of the disclosed assets amounted to US$72 million. Thereafter, we directed that the quantum of the reinstated Mareva injunctions would remain at US$180 million, and that if R1 and R2 wished to reduce the quantum, they were to file the appropriate applications with supporting affidavits.

SUM 132

7 On 2 December 2020, the appellant filed SUM 132 to seek an order for the reinstated Mareva injunctions to continue to be in effect until the respondents fully satisfy: (1) the Judgment Sum; (2) the costs of appeal; and (3) the costs of the High Court Trial.

8 The appellant also sought to be released from certain undertakings it had provided when the worldwide Mareva injunctions were granted against R1 and R3 ("Undertakings"), namely:

> (a) The appellant shall not without the leave of the Court begin proceedings against R1 and/or R3 in any other jurisdiction or use information obtained as a result of an order of the Court in this jurisdiction for the purpose of civil or criminal proceedings in any other jurisdiction.
>
> (b) The appellant shall not without the leave of the Court seek to enforce this order in any country outside Singapore or seek an order of a similar nature including orders conferring a charge or other security against R1 and/or R3 or R1 and/or R3's assets.

9 In addition, the appellant sought an order for R1 and R2 to file an affidavit declaring their assets whether inside or outside of Singapore, whether in their own name(s) or not, and whether solely, jointly, or beneficially owned, giving the value, location, and details of all such assets, including encumbrances.

SUM 133

10 On 9 December 2020, R1 and R2 filed SUM 133 to seek an order for the enjoined quantum of US$180 million in the reinstated Mareva injunctions to be reduced to US$72 million.

Events thereafter

11 On 4 January 2021, this court ordered the reinstated Mareva injunctions against R1 and R2 to continue until the disposal of SUM 132 and SUM 133.

R1's and R2's submissions

12 Although SUM 133 only sought for the enjoined sum to be reduced to US$72 million ([10] above), in their submissions, R1 and R2 argue for the sum to be further reduced to US$34 million. They argue that not less than US$37.6 million has since been paid to or recovered by the appellant, leaving a remaining judgment debt of only about US$32.4 million. Even providing for a buffer for costs and post-judgment interests, only about US$34 million remains outstanding. The quantum of the reinstated Mareva injunctions should hence be reduced to US$34 million to give effect to the principle that the enjoined sum should cover no more than is necessary to protect the satisfaction of the Judgment Sum.

13 They claim that they have (in their affidavits) sufficiently identified assets that amount to more than US$32.4 million, including a judgment debt owed by the appellant to R1, and R1's shares in various subsidiaries and associated companies.

14 They also allege that the appellant has an ulterior motive in delaying and complicating the process for the payment of the Judgment Sum, despite R1's and R2's intentions to pay up the Judgment Sum and costs.

Appellant's submissions

15 The appellant argues that the Mareva injunctions ought to continue until R1 and R2 have fully satisfied the Judgment Sum and costs. The conditions to impose a post-judgment injunction are met as there is a real risk of R1 and R2 dissipating their assets; the injunctions would aid the execution of the Judgment Sum; and it would be in the interests of justice as the Judgment Sum remains outstanding.

16 The appellant does not dispute that a partial payment of US$37 million has been made and that it has also already recovered an additional sum of around US$720,000 from garnishee proceedings. However, it argues that the quantum of the Mareva injunctions should remain as US$142 million (US$180 million – US$38 million). This is because R2 has been providing false and inaccurate asset disclosure, while R1 has been inflating the valuation of its own assets, and has failed to accurately disclose its assets in previous affidavits of assets.

17 The appellant also argues that the disclosure affidavit sought ([9] above) is needed in order for the appellant to police the Mareva injunctions. R1's latest affidavit is insufficient as it only discloses unencumbered assets up to a purported value of US$72 million.

18 Finally, the appellant argues that the Undertakings ([8] above) should be removed in order to enable the appellant to commence enforcement proceedings against R1 in other jurisdictions for the balance Judgment Sum.

Issues to be determined

19 The issues to be determined are:

(a) whether the reinstated Mareva injunctions should be extended until satisfaction of the Judgment Sum and payment of costs;

(b) if yes, what the enjoined quantum should be;

(c) whether R1 and R2 should be made to file a fresh affidavit disclosing their assets; and

(d) whether the appellant should be released from its Undertakings.

Whether the reinstated Mareva injunctions should be continued

20 We order that the reinstated Mareva injunctions be extended until the Judgment Sum and costs are paid up by the respondents. R1 and R2 accept that it is principled to extend the Mareva injunctions, and their objection only relates to the quantum of the injunction. In any case, the conditions to grant a post-judgment Mareva injunction are met.

21 This is perhaps the first occasion for this court to specifically address in a written decision the conditions for the grant of a Mareva injunction *post-judgment*. In this regard, we affirm the decision of Judith Prakash J (as she was then) in *Hitachi Leasing (Singapore) Pte Ltd v Vincent Ambrose and another* [2001] 1 SLR(R) 762 where she held that in deciding whether to grant a *post-judgment* Mareva injunction, the court must be satisfied that (at [18] to [20]):

(a) there is a real risk of the debtor dissipating his assets with the intention of depriving the creditor of satisfaction of the judgment debt;

(b) the injunction must act as an aid to execution; and

(c) it must be in the interests of justice to grant the injunction.

22 The first requirement is well established for all Mareva injunctions in general (see *eg*. *Bahtera Offshore (M) Sdn Bhd v Sim Kok Beng and another* [2009] 4 SLR(R) 365 at [13]), and has also been established as a requirement to be met before the court will grant a Mareva injunction *pending appeal* (*JTrust Asia Pte Ltd v Group Lease Holdings Pte Ltd and others* [2020] 2 SLR 490 ("*JTrust (pending appeal)*") at [39] to [40]). The English Court of Appeal in *Emmott v Michael Wilson & Partners Ltd* [2019] 4 WLR 53 ("*Emmott*") has similarly stated that the purpose of a post-judgment Mareva injunction is to prohibit the dissipation of assets (at [40]).

23 The second requirement is also an obvious condition because the purpose of a post-judgment Mareva injunction can only be granted to assist the execution of the debt (see also *Emmott* at [40]). A Mareva injunction will not be allowed for ulterior motives such as to oppress the enjoined party (*Meespierson NV v Industrial and Commercial Bank of Vietnam* [1998] 1 SLR(R) 287 ("*Meespierson*") at [30]). The third condition is also well established, although the courts have typically phrased it as a test of "balance of convenience" (*Meespierson* at [28]). Nonetheless, the analysis is the same – whether in considering all the circumstances, it would be just to grant the injunction (*Meespierson* at [28]).

24 In our judgment, all three conditions are met in the present case:

(a) First, there is a real risk of dissipation. This court has already undertaken this analysis *twice* in relation to R1 and R2 and found that there is indeed such a risk (see *JTrust (pending appeal)* at [92] to [96]; *JTrust Asia Pte Ltd v Group Lease Holdings Pte Ltd and others* [2018] 2 SLR 159 at [63] to [83]). R1 and R2 have not claimed that anything has since occurred which would change our analysis and we do not see any reason to alter our previous assessment.

(b) Second, given that there is a real risk of dissipation, the Mareva injunctions will indisputably facilitate execution of the Judgment Sum.

(c) Third, the grant of the Mareva injunctions would clearly be in the interests of justice. The Judgment Sum and cost orders have already been ordered in favour of the appellant and there is no injustice in enjoining the sum required to ensure that the Judgment Sum is promptly paid to the appellant.

Quantum of the Mareva injunctions

25 We turn to the second issue concerning the quantum of the Mareva injunctions which the appellant seeks to maintain at US$142 million. However, there is no principled reason to keep the injunctions at US$142 million when the outstanding debt is only around US$34 million. The appellant has not provided any authority where the court has ordered a post-judgment Mareva injunction at a quantum significantly higher than the judgment debt. While the appellants are correct in highlighting that R1 and R2 have not been forthcoming with their asset disclosure (discussed below), it does not follow that the court should maintain a Mareva injunction of US$142 million despite the clear knowledge that the balance Judgment Sum, costs and interests aggregate at most to only around US$34 million. In our view, this would be a disproportionate and

unprincipled reaction to the unsatisfactory state of R1's and R2's asset disclosure. Instead, the proper remedy for the failure to provide proper disclosure is to commence contempt proceedings (*provided* the conditions are satisfied), or to order further disclosure, as we have decided to do so.

26 That said, we note the appellant's concern that the assets which R1 and R2 have disclosed are primarily illiquid assets, that may be difficult for the appellant to convert into monies. In addition, a large portion of these assets are shares and their values may fluctuate according to market conditions or the profitability of the companies which issued the shares. For these reasons, we think that it is appropriate to factor some margin for such contingencies and order the quantum of the Mareva injunction to be reduced to US$50 million instead of US$34 million as sought by R1 and R2. That having been said, it should be impressed upon the respondents that the sooner they settle the balance Judgment Sum, the sooner the injunctions will be discharged.

Disclosure order

27 We turn to the third issue as to whether R1 and R2 should be ordered to file a fresh affidavit to disclose their assets ([19(c)] above). We agree with the appellant that a further disclosure order should be made as the present assets disclosed by R1 and R2 are inflated and/or insufficient to satisfy the enjoined quantum of US$50 million.

Assets identified by R1

28 Brian William Banes ("Banes"), the Strategic Finance Officer of Group Lease Public Company Limited ("GL"), the parent company of R1, filed an affidavit on R1's behalf disclosing shares with the following alleged valuations:

S/N	Company	Number of shares	Value
1	Commercial Credit and Finance PLC ("CCF")	95,390,500	THB$1,762,149,000 (US$57,832,261)
2	PT Group Lease Finance Indonesia ("GL Indonesia")	65,000	THB$172,133,000 (US$5,649,262)
3	PT Bank JTrust Indonesia Tbk ("BJI")	281,549,137	THB$279,015,000 (US$9,157,040)
4	GL Finance PLC ("GL Finance")	51,500	THB$359,470,000 (US$11,797,506)
5	GL Leasing Lao ("GL Leasing")	5,223,814	THB$176,195,000 (US$5,782,573)
6	BG Myanmar Microfinance Company Ltd ("Microfinance")	18,849,080	THB$717,922,000 (US$23,561,602)
7	GL-AMMK Co Ltd ("GL-AMMK")	1,710,000	THB$59,350,000 (US$1,947,818)
8	Thanaban Company Ltd ("Thanaban")	200	THB$20,000 (US$656) (par value)
9	Bagan Innovation Technology (Singapore) Pte Ltd ("Bagan")	2,778	THB$63,776,000 (US$2,093,075)
	Total		US$117,821,373

29 Banes also identifies US$9,346,551 of trade debts and receivables owned by R1, and sums in R1's various bank accounts totalling to THB$256,987.33, US$17,744.59 and LKR$16,926,249.37.

Assets identified by R2

30 R2 testifies that he owns two cars with a total purchase price of S$980,000, and that he is the sole shareholder of Asia Partnership Fund Pte Ltd ("APF") which allegedly has a net asset value of US$795,594.

Assets with disputed value

31 The appellant disputes the valuation of a number of these assets, which will be discussed in turn.

CCF shares

32 Banes states that although CCF is listed on the Colombo Stock Exchange, there is no active market for its shares and hence its value cannot be derived from the traded share price. He relies on the most recent valuation by a Sri Lankan accounting firm ("Gajma") published in January 2020 ("the Gajma 2020 report") which valued CCF shares at LKR$111.44 per share as at 31 December 2019. This translates to a value of about US$58,188,205 (after conversion from LKR). Banes also points out that Gajma had also valued CCF shares at above LKR$111.44 per share in an earlier report in 2017 ("the Gajma 2017 report"). The method employed in these Gajma reports is the Residual Income method which the respondents' expert witness, Kon Yin Tong ("Kon"), agrees is an appropriate method to be used for the valuation. However, Kon did not value the CCF shares. In addition, no expert from Gajma has filed an affidavit to take responsibility for the Gajma reports.

33 The appellant's expert witness, Neill Paul Poole ("Poole"), agrees with the use of the Residual Income method. However, he disagrees with the end result because in his view, the Gajma's valuation is overly optimistic and is unlikely to be achieved given CCF's declining financial performance and the slowdown in the Sri Lankan economy. Instead, Poole values R1's shares in CCF as being worth at most around US$11,840,000. Poole alternatively values the shares at US$11,597,000, applying the Guideline Publicly-Traded Comparable Method.

34 For the purposes of the present applications before us, we prefer Poole's valuation over Gajma's. Poole's valuation report was published on 6 January 2021, valuing the shares in CCF as at 30 November 2020. In contrast, Gajma's 2020 report valued the shares as at 31 December 2019. Poole's valuation report

would have taken into account the impact of the COVID-19 pandemic on the share value of CCF, whereas Gajma's valuation, being published before the pandemic, did not do so. Given the devastating impact that the COVID-19 pandemic has had on the world economy in general, we accept Poole's expert opinion that any valuation prepared prior to the COVID-19 pandemic may not be reliable.

35 In addition, we share Poole's concern about the independence and credibility of the Gajma reports. Both Gajma reports include an express "disclaimer" on the very first page, namely, that the information in the report was arrived at partially based on information provided by the management of R1, and that such information had not been independently verified. Further, Gajma had also cautioned that the valuation in the reports involved significant elements of subjective judgment and analysis which may or may not be correct, and Gajma had provided no guarantee for the accuracy of the reports. These concerns about the credibility of the Gajma reports are further exacerbated by the fact that no independent expert witness from Gajma has sworn an affidavit to take responsibility for the Gajma reports. Instead, the Gajma reports are adduced in Banes' affidavit, although he was not the maker of the reports. The appellant contends, and we agree, that this violates O 40A r 3(1) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed), which requires all expert evidence to be in a written report exhibited to an affidavit affirmed by the expert.

36 We also accept Poole's opinion that Gajma's estimation of CCF's future growth is overly optimistic. The graphs adduced in the Gajma 2020 report show an overall trend that CCF and a subsidiary of CCF, Trade Finance and Investments PLC ("TFI"), have been suffering from *decreasing* profit margins from 2014 to 2019. Notwithstanding this objective development, the Gajma 2020 report predicts an overall trend of *increasing* profit margins for these two

companies from 2020 to 2024. There does not seem to be any valid justification for this optimistic outlook. Poole opines:

> I have not seen any information that might justify the significant improvement to the projected profit for CCF and TFI. I therefore am concerned that the projections of CCF/TFI's future financial performance used in the Gajma 2020 Valuation were overly optimistic and unlikely to be achieved.

37 We agree with Poole's expert opinion. For these reasons, we prefer Poole's valuation of US$11,840,000 (being the higher of Poole's two valuations) over Gajma's valuation as the value to be attributed to R1's CCF shares ([33] above).

Bagan shares

38 Banes testifies that since Bagan is a private company and there is no active market for its shares, R1's shares in Bagan should be valued at the price that R1 had paid for in December 2016. Banes argues that this is a conservative valuation as Bagan's shares have been sold at much higher prices in recent transactions.

39 The appellant argues that R1's valuation of its Bagan shares is inflated. Poole opines that although Bagan's shares have been sold at higher prices in recent years, based on the limited information that is known, all those shares were sold to existing members via private transactions, and their value may not have been calculated at arm's length. Their sale prices are therefore not necessarily representative of the market value of those shares. Instead, Poole opines that the value of R1's shares in Bagan should be assumed to be nil. This is because Bagan had received consecutive disclaimers of opinion from its auditors for its last two published financial statements for the financial years ("FY(s)") ending September 2018 and September 2019. The disclaimers are in

relation to Bagan's assets, which comprise 92% of Bagan's paid-up capital. If those assets are assumed to be of nil value, which is what a buyer would assume given the disclaimers, Bagan's total assets would be less than its share capital as of 30 September 2019 (date of last financial accounts) and R1's shares in Bagan should thus be valued at nil.

40 We agree that R1 and R2 have failed to prove their claimed value of the Bagan shares. We accept Poole's opinion that the transaction price of shares in a private company *vis-à-vis* private transactions with existing members is not a good reflection of the value of those shares, unless it can be shown that those transactions were conducted at arm's length with adequate independent valuation of the shares. There is no evidence before us as to how the sale price(s) in those private transactions were reached, and whether they were determined at arm's length. Besides, R1 purchased the shares in December 2016, and the other private transactions referred to by Banes were conducted in 2018 and 2019, all of which took place before the impact of the COVID-19 pandemic. For the same reason stated at [34] above, the share sale price may not be a realistic or accurate reflection of their current value.

41 We also observe that it is somewhat inexplicable that R1 did not commission an independent third-party valuer to value its shares in Bagan, as it had done for its CCF shares (Gajma).

42 Since R1's and R2's method of valuation is not sufficiently reliable, there is no other alternative but to accept Poole's valuation, *ie*, that the shares might be worth nothing or are of negligible value. We should add that the fact that Bagan's last two financial statements were qualified by its auditors does not mean that the value of the Bagan's assets is necessarily nil. However, we note from a table drawn up by Poole to summarise Bagan's financial position as at

30 September 2019 that Bagan's total current liabilities exceeded its total current assets, which suggests that in a liquidation scenario, the shareholders would likely get nothing back after the creditors' debts are paid off. This may in turn also result in a nil value for the shares.

BJI shares

43 R1 contends that its BJI shares have a carrying value of US$9,157,040. However, Banes does not explain how this valuation was arrived at, apart from asserting that it is based on the carrying value as reflected in the GL's audited financial statements for FY 2019. However, we are unable to see how this figure of US$9,157,040 was derived from the statements as the sections of the statement cited by Banes do not seem to reflect this figure. In contrast, Poole has valued the BJI shares at US$5,284,000 as at 30 September 2020, by adopting the Price-to-Book ("P/B") valuation method.

44 We find that Poole's valuation should be preferred. It is the more recent valuation which has taken into account the economic fluctuations caused by the COVID-19 pandemic (see also [34] above).

GL Indonesia shares

45 Banes values R1's shares in GL Indonesia at US$5,649,262. Likewise, he does not explain how this valuation was arrived at, apart from asserting that it is based on the carrying value as reflected in the GL's audited financial statements for FY 2019. However, we are unable to see how this figure was derived from the statements as the sections of the statement cited by Banes do not appear to reflect this figure. On the other hand, Poole values the shares at US$2,828,000 as of 30 November 2020 using the P/B method.

46 In our view, Poole's valuation should be preferred. It is again the more recent valuation which has taken into account the economic fluctuations caused by the COVID-19 pandemic (see also [34] above).

GL Finance, GL Leasing, Microfinance, GL-AMMK and Thanaban shares

47 This section concerns the shares listed at S/N 4 to 8 of the table of shares at [28] above. The value of the shares as asserted by Banes is listed in the table above and adds up to an aggregate value of US$43,090,155. However, Banes does not explain how these valuations are arrived at. He merely asserts that the values for the shares at S/N 4 to 7 are based on the carrying value as reflected in GL's *audited* financial statement for FY 2019 and GL's *unaudited* statement for the three-month and six-month periods ending 30 June 2020, and that the value for the shares at S/N 8 (Thanaban) is the par value. We are unable to see how the values for the shares listed at S/N 4 to 7 are derived from the financial statements as the sections of the statement cited by Banes do not seem to reflect these figures. Furthermore, in relation to the shares at S/N 8, it must be obvious that the par value is not the market value of the shares.

48 Poole states that he is unable to perform a valuation of any of these shares as the relevant financial information for those companies have not been disclosed.

49 Accordingly, we find that R1 and R2 have failed to prove the alleged value of these shares. GL's unaudited statement ending 30 June 2020 is not sufficiently credible as it is unaudited. GL's 2019 audited financial statement may also not be a good reflection of the current value of those shares, post COVID-19. More importantly, R1 and R2 have not disclosed financial documents of the share-issuing companies themselves. In the circumstances, R1 and R2 have not complied with this court's direction on 25 November 2020 to

provide proper supporting documents for the valuation of these assets. Since there is no alternative valuation, there is no choice but to disregard the purported valuation of these shares.

Receivables

50 Although Banes identifies receivables worth US$9,346,551 ([29] above), we find that they should be disregarded as there are no supporting documents to prove them. We also note the appellant's concern that several of these receivables are due from related parties.

Bank accounts

51 We accept that there are sums in R1's various bank accounts totalling THB$256,987.33, US$17,744.59 and LKR$16,926,249.37 ([29] above) as they are supported by documentary evidence which the appellant is not contesting. However, R1 and R2 have not converted the currencies to USD and have not made any submissions on the applicable exchange rate. In this regard, we adopt the appellant's conversion rates for these sums, and the converted sums amount to a total of US$115,000.

Debt of US$23m owed by appellant to R1

52 Finally, R1 and R2 rely on a judgment debt of THB$685 million (approximately US$23 million) owed by the appellant to GL, arising from a judgment in Thailand ("the Thai Debt"). As GL has assigned the Thai Debt to R1, R1 seeks to set-off the Thai Debt against the Judgment Sum.

53 The appellant resists this, arguing that there is no basis for the set-off as the debt is not final, since the appellant has a pending appeal before the Thai Court of Appeal. In support of this, the appellant has adduced an expert report

from its expert on Thai law, Mr Weerayuth Sajjaphanroj ("Sajjaphanroj"), who testified that under Thai law, the Thai Debt cannot be set off if there is an appeal pending. The appellant also argues that R1 and R2 have not brought any action to recognise or enforce the Thai Debt in Singapore. Finally, it argues that R1 and R2 cannot rely on equitable set-off under Singapore law as the Thai Debt is not sufficiently connected to the Judgment Sum.

54 R1 and R2 disagree, arguing that Sajjaphanroj's opinion is incorrect and that the Thai Debt can be set-off even pending an appeal. They seek leave to adduce an expert opinion on this issue as Sajjaphanroj's opinion was only adduced when the reply affidavits were exchanged and they therefore have not had the opportunity to respond.

55 In our view, the question whether a set off can be validly raised against the Judgment Sum is to be determined under *Singapore* and not Thai law. This court in *Pacific Rim Investments Pte Ltd v Lam Seng Tiong and another* [1995] 2 SLR(R) 643 ("*Pacific Rim*") stated that equitable set-off is only permitted where there are good equitable grounds for directly impeaching the title to the debt which the creditor is seeking to enforce (at [35]). It is not any cross-claim which can be set-off, but only cross-claims that arise out of the same transaction or which are so closely connected with the claim that it would be manifestly unjust to allow the creditor to enforce payment without taking into account the cross-claim (*Pacific Rim* at [35]).

56 In our view, the Thai Debt is wholly unrelated to the High Court Trial and the corresponding appeal from which the Judgment Sum arose. First, the Thai proceedings from which the Thai Debt arose did not even concern R1, but concerned a separate entity, GL. Second, the Thai proceedings had nothing to do with the torts of deceit and conspiracy in the present case. Instead, the Thai

Debt was awarded against the appellant arising from a damaging and failed reorganisation application against GL in the Thai bankruptcy courts. Finally, we note for completeness that it seems likely that GL had assigned the Thai Debt to R1 with the specific intent of allowing R1 to exercise the right of set-off against the Judgment Sum. R1 and R2 have not adduced the agreement under which the Thai Debt was purportedly assigned from GL to R1. There is therefore no information before us as to the date of the assignment and the consideration for the assignment, which would be relevant for examining the *bona fides* of the assignment.

57 Accordingly, we find that the Thai Debt does not constitute an asset forming part of the enjoined US$50 million. We reject R1's and R2's request for leave to adduce an expert opinion on Thai law since the Judgment Sum cannot be set-off against the Thai Debt under Singapore law, regardless of the position under Thai law.

58 In any case, a few weeks after the parties filed their written submissions, the appellant's solicitors wrote in to inform the court that the Thai Court of Appeal has since set aside the Thai Debt. This is not disputed by the respondents. As such, apart from the fact that there is no merit in the purported set-off, the issue is now moot.

Conclusion

59 One last outstanding matter remains to be dealt with. R1 and R2 submit that Poole is biased and that the court should appoint an independent court expert to value their assets. We disagree. The court had directed R1 and R2 to file an affidavit to identify the asset(s) forming the unencumbered value of their assets sufficient to satisfy the Judgment Sum. They have had their fair chance to adduce expert evidence to justify the valuation of their assets, but their expert

valuations were manifestly unsatisfactory for the reasons elaborated at [32] to [51] above. There is no legitimate reason why this court should appoint an independent expert to conduct the valuation of the assets of R1 and R2 in circumstances when they have *themselves* failed to undertake a proper expert valuation of their own assets. They have to accept the consequences of their own unsatisfactory valuation.

60 Following from the above, we find, based on the evidence before us, that the proven values of the assets disclosed by R1 and R2 are as follows:

Asset	**Proven value**
Bagan shares	0
CCF shares	US$11,840,000
BJI shares	US$5,284,000
GL Indonesia shares	US$2,828,000
GL Finance, GL Leasing, Microfinance, GL-AMMK and Thanaban shares	0
Receivables	0
R1's bank accounts (value undisputed)	US$115,000
R2's cars (value undisputed)	S$980,000 (approximately US$734,446.30)
APF (value undisputed)	US$795,594
Total	**US$21,597,040.30**

61 The total valuation amounting to US$21,597,040.30 falls below the enjoined quantum of US$50 million. Consequently, we order R1 and R2 to file a fresh affidavit within three weeks of the date of this judgment to disclose assets up to the sum of US$100 million. Although the enjoined quantum is only US$50 million, it is a standard practice to order disclosure in excess of the enjoined quantum or even *all* of the defendant's assets (see *Sea Trucks Offshore Ltd and others v Roomans, Jacobus Johannes and others* [2019] 3 SLR 836 ("*Sea Trucks*") at [52]; see also para 2 of Forms 7 and 8 of the Supreme Court Practice Directions). The reason for requiring full disclosure of all assets,

instead of partial disclosure of assets sufficient to constitute the enjoined quantum, is because the value of assets disclosed by the defendant is often "rough and ready" and often estimated rather than forensically prepared under microscopic scrutiny (*Sea Trucks* at [46]). It would be unrealistic to expect that the estimated value would be so close to its true value such that it could be said with confidence that no other assets need to be disclosed in order to preserve the efficacy of the Mareva injunction (*Sea Trucks* at [46]). Finally, the defendant may deal with its frozen assets to pay ordinary expenses or legal fees (*Sea Trucks* at [48] to [49]), and it is thus prudent for the court to order disclosure of excess assets to ensure that the plaintiff can police the Mareva injunction.

62 We also remind the respondents that any valuation of assets so disclosed must be *properly* supported and not based on incomplete, arbitrary or subjective belief. In this regard, we place on record that the respondents' disclosure to-date has been far from satisfactory.

63 Next, we note that R1 and R2 have made the following allegations that the appellant is seeking to delay payment of the Judgment Sum:

(a) The appellant "dragged its feet" pertaining to the sale of the BJI shares, forcing R1 to apply to court for leave to sell those shares;

(b) When R1 applied for leave to sell the shares (in HC/SUM 5464/2020), the appellant sought to impose a minimum sale price on those shares, which was refused by the court (in HC/ORC 365/2021); and

(c) The appellant "dragged its feet" on the quantum of costs payable in respect of the High Court Trial. It claimed that it needed time to compile its disbursements.

64 R1 and R2 further assert that the appellant has an ulterior motive in delaying the payment, namely, to take advantage of the reinstated Mareva injunctions to prevent R1 from doing business, and to sustain indebtedness against R1 and R2 for as long as possible, so that it can commence proceedings against R1, R2, and their affiliates around the world, to bring about the demise of the Group Lease related group of companies and thereafter to acquire the Group Lease group for itself.

65 It is not necessary for this court to deal with these allegations since leave has already been granted to R1 to sell the BJI shares (HC/ORC 365/2021). Besides, we are ordering the appellant to complete its compilation of its disbursements and to notify the respondents of its costs for the High Court Trial within the next two weeks. This would ensure that the respondents can effect payment of the outstanding Judgment Sum promptly, so that the Mareva injunctions need not be in place for longer than necessary. This would also address R1's and R2's concerns that the appellant is allegedly abusing the Mareva injunctions for an ulterior motive.

Undertakings

66 Finally, we turn to the last issue on whether the appellant should be released from the Undertakings (see [19(d)] above).

Legal principles

67 The appellant acknowledges that there "does not appear to be any reported judgment in Singapore on the *removal* of the [u]ndertakings in the context of a post-judgment freezing injunction". The appellant relies on a decision which concerned the *variation* of Mareva injunctions, *Sumifru Singapore Pte Ltd v Felix Santos Ishizuka and others* [2020] 4 SLR 904

("*Sumifru*"), to argue that the undertakings can be removed if it is in the interests of justice to do so.

68 In our judgment, it would not be appropriate to transpose the test developed in *Sumifru* to apply for the removal of undertakings as they serve quite different purposes. The purpose of a Mareva injunction is to prevent dissipation of assets, where it is in the interests of justice to do so. This explains why a Mareva injunction can be varied when it is in the interests of justice to do so (*Sumifru* at [19]).

69 In contrast, the purpose of the undertakings is to protect the defendant from the risk of oppression which may arise from a multiplicity of suits (*Bouvier, Yves Charles Edgar and another v Accent Delight International Ltd and another and another appeal* [2015] 5 SLR 558 ("*Bouvier*") at [131]). These undertakings, which are found in Form 7, Schedule 1 of the Supreme Court Practice Directions, are standard undertakings accompanying a worldwide Mareva injunction. In particular, the two undertakings which the appellant seeks to be released from can be found in paras 9 and 10 of Schedule 1, and they serve to prevent the plaintiff from enforcing the Mareva injunction outside Singapore, commencing proceedings against the defendant in another country, or using information obtained as a result of an order of court for purposes of proceedings in other jurisdictions. These standard undertakings are vital, and the courts have gone so far as to say that a worldwide Mareva injunction should not be granted unless the plaintiff provides such undertakings (*Bouvier* at [131]). These undertakings should not be removed without a sound and proper reason.

70 In our view, the legal test for modification/removal of undertakings in the context of discovery orders would be a more suitable test to transpose to the present case, since the purpose of such undertakings is likewise to protect the

defendant by preventing the plaintiff from abusing the information obtained for ulterior purposes (*Beckkett Pte Ltd v Deutsche Bank AG* [2005] 3 SLR(R) 555 ("*Beckkett*") at [14]). In the context of discovery orders, a party can be released from the *Riddick* undertaking if: (a) it demonstrates cogent and persuasive reasons for the release; and (b) the release would not occasion injustice to the person giving discovery (*Beckkett* at [19]). These requirements can be modified and transposed into the context of Mareva injunctions such that a plaintiff who seeks to be released from his undertakings must: (a) demonstrate cogent and persuasive reasons for the release; and (b) show that the release would not occasion injustice to the defendant who is enjoined by the Mareva injunction or who had disclosed information pursuant to any court order.

Application to the facts

71 The appellant argues that the Undertakings ([8] above) should be removed as the appellant seeks liberty to commence enforcement proceedings against R1 in other jurisdictions for the Judgment Sum. According to the affidavits, the vast majority of R1's assets are located overseas, and the assets of R1 in Singapore are insufficient to satisfy the Judgment Sum. If the appellant is required to seek leave of court to commence enforcement proceedings and/or enforce the Mareva injunction abroad, it will be seriously prejudiced as the need to seek such leave will result in further lengthy delays, during which R1 and R2 may further dissipate their assets. Since the District Court of Zurich has already granted the appellant's request to attach R2's assets and APF's assets to the Judgment Sum, the appellant seeks for the Undertakings to be removed so that it can proceed with enforcement proceedings against R2's assets elsewhere in the world.

72 On the other hand, R1 and R2 argue that they clearly intend to satisfy the Judgment Sum in full and that there is no basis for the appellant to be released from the Undertakings and to be permitted to pursue foreign enforcement proceedings as this would incur unnecessary time and costs.

73 In our view, there is presently no cogent and persuasive reason to release the appellant from its Undertakings. It does not seem necessary to permit the appellant to commence foreign enforcement proceedings at the present time. R1 and R2 have evinced an intention to pay the Judgment Sum, as can be seen from the fact that they have already paid more than half of the Judgment Sum, obtained leave to sell their BJI shares to cover the remaining debt, and have sought for the release of around US$10 million in Cyprus (which is currently frozen by a Cypriot injunction obtained by the appellant) to satisfy the Judgment Sum. Further, the Mareva injunctions in place would be adequate to safeguard the appellant's interests. In any case, should the appellant wish to commence foreign enforcement proceedings, it is at liberty to file a fresh application for the release of the Undertakings. In this way, the court will retain control over the foreign enforcement proceedings which the appellant may seek to commence in order to avoid oppression and the incurring of unnecessary time and costs, while allowing the appellant to proceed with enforcement where it is appropriate and meritorious to do so.

Conclusion

74 We order that:

(a) The reinstated Mareva injunctions be extended until the respondents satisfy the Judgment Sum and costs.

(b) The enjoined quantum of the Mareva injunctions be reduced to US$50 million.

(c) The appellant is to complete compiling its disbursements and notify the respondents of its costs for the High Court Trial within two weeks.

(d) R1 and R2 are to file a fresh affidavit within three weeks to disclose assets up to the value of US$100 million, unless the Judgment Sum and costs are paid up by then. Any valuation of assets so disclosed must be properly supported and not based on incomplete, arbitrary or subjective belief.

(e) The appellant's Undertakings are to remain in the meantime.

75 In light of the above orders, we think that a fair costs order is to award costs of an aggregate sum of $50,000 inclusive of disbursements to the appellant with the usual consequential orders for payment out.

76 This is the *fourth* judgment issued by this court for this case. Given the history of the dispute and conduct of *both* parties, we somehow doubt that this will be our last word on this case. We, however, *strongly* encourage *both* parties to act responsibly to bring closure to this dispute as this court has already pronounced a *final* judgment on its merits.

Steven Chong
Justice of the Court of Appeal

Quentin Loh
Judge of the Appellate Division

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