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

[2021] SGHC 42

Suit No 211 of 2019 (Summonses Nos 2058, 3430 and 3968 of 2020)

Between

Sang Cheol Woo

… *Plaintiff*

And

(1) Charles Choi Spackman
(2) Kim Jae Seung
(3) Kim So Hee
(4) Richard Lee
(5) Funvest Global Pte Ltd
(6) Spackman Media Group Limited
(7) Plutoray Pte Ltd
(8) Vaara Pte Ltd
(9) Starlight Corp Pte Ltd

… *Defendants*

JUDGMENT

[Civil Procedure] — [Injunctions]
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v
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18 February 2021 Judgment reserved.

Tan Puay Boon JC:

Introduction

1 This case concerns a number of interlocutory applications revolving around the efforts of the plaintiff, Mr Sang Cheol Woo ("the Plaintiff"), to enforce judgments obtained in the Republic of Korea ("Korea") and New York (the "Korean Judgments" and "New York Judgment" respectively, and "the Judgments" collectively) in Singapore against the first defendant, Mr Charles Choi Spackman ("Mr Spackman"). These applications before me are HC/SUM 2058/2020 ("SUM 2058/2020"), HC/SUM 3430/2020 ("SUM 3430/2020") and HC/SUM 3968/2020 ("SUM 3968/2020") in HC/S 211/2019 ("Suit 211").

Background

The parties

2 The Plaintiff is a South Korean businessman and investor. He was a minority shareholder in a publicly listed Korean company, Littaeur Technologies Co Ltd ("Littaeur Tech") from May 2000 until June 2001.[1]

3 Mr Spackman is a citizen of the United States of America, and was the majority owner of Littaeur Tech. The remaining parties to the proceedings are (or at least are alleged to be) related to Mr Spackman in some manner or other:

(a) The second defendant, Mr Kim Jae Seung ("Mr Kim"), is Mr Spackman's brother-in-law and business associate. He is the named owner, shareholder and director of GD Enterprise Holdings Ltd ("GD Enterprise"), DVG Limited ("DVG") and Azur Investissement Ltd ("Azur"), and director of Trinity Capital Advisors Limited ("Trinity").[2] These companies (collectively referred to as the "BVI Companies" as they were all incorporated in the British Virgin Islands), are not parties to the proceedings but had been subject to certain injunctions in the earlier stage of these proceedings.

(b) The third defendant, Mdm Kim So Hee ("Mdm Kim"), is Mr Spackman's wife and Mr Kim's sister. She is the named owner of Trinity.

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1 Statement of Claim (Amendment No 3) ("SOC") at para 1.

2 SOC at para 2.1.

(c) The fourth defendant, Mr Richard Lee ("Mr Lee"), is Mr Spackman's business associate. He has held various executive positions in entities related to Mr Spackman, including being the Executive Director of the Hong Kong-incorporated Spackman Media Group Limited ("SMG(HK)") and Director and Managing Director of Spackman Media Group Pte Ltd (a Singapore incorporated company) ("SMG(SG)").[3]

(d) The fifth defendant, Funvest Global Pte Ltd ("Funvest"), is a company incorporated in Singapore, wholly owned by Republic Park Productions Pte Ltd ("Republic Park"), a company incorporated in the Cayman Islands. As of April 2020, Funvest allegedly held 8,551,936 shares in SMG(HK), which it had agreed to sell to ESA Co Ltd ("ESA"), a publicly listed Korean company.[4]

(e) The sixth defendant, SMG(HK), is a Hong Kong-incorporated company. The Plaintiff alleges that SMG(HK) was founded by Mr Spackman.[5] The shares in SMG(HK) are the central focus of the dispute in these applications.

(f) The seventh defendant, Plutoray Pte Ltd ("Plutoray"), the eighth defendant, Vaara Pte Ltd ("Vaara"), and the ninth defendant, Starlight Corp Pte Ltd ("Starlight"), are companies incorporated in Singapore (collectively referred to as "PVS"). They were allegedly involved in transfers of shares in SMG(HK) from GD Enterprise, Azur and/or

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3 SOC at para 3(c), (d).

4 SOC at para 4.

5 SOC at para 3(c).

Trinity, and sold the shares to Republic Park on or around 24 September 2019.[6]

4 The second to fifth defendants were added to the proceedings by way of amendments to pleadings on 8 July 2020. These amendments were also the subject of HC/RA 148/2020 ("RA 148/2020"). The sixth to ninth defendants were added to the proceedings by way of amendments dated 2 October 2020. I address this as part of the procedural history below.

The underlying dispute

5 I begin by summarising the underlying dispute. The Plaintiff was a minority shareholder in Littauer Tech and had acquired his shareholding for a total of KRW5,790,744,000 at KRW122,400 per share.[7] Mr Spackman was the majority shareholder and held 50.6% of Littauer Tech. In or around July 2000, the Plaintiff alleged that Mr Spackman caused Littauer Tech to acquire a company that he had established, Silverline Investment Limited, in exchange for US$1.3bn worth of stock in Littauer Tech. The Plaintiff also alleged that Mr Spackman had inflated the value of the shares of Littauer Tech and Silverline by making false and exaggerated claims. In particular, it was alleged that whilst Mr Spackman claimed that there was a large amount of foreign capital being invested into Littauer Tech, there was in fact no such investment.[8]

6 Mr Spackman then allegedly liquidated 11.5% of the shares in Littauer Tech for a profit of more than KRW300bn. However, the Plaintiff was not able

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6 SOC at para 4.1.

7 SOC at para 7.

8 John Han's 3rd Affidavit dated 23 April 2019 at para 10.

to liquidate his shares as the agreement he had entered into with Mr Spackman prevented disposal of shares for one year from the date of purchase.[9] Littauer Tech's share price subsequently plummeted and continued to fall. It was then delisted from the Korean stock exchange on 10 April 2003 when the share price was KRW10 per share.[10]

The Korean proceedings

7 On the basis of these allegations, the Plaintiff commenced an action in the Seoul Central District Court (25th Division) ("Seoul District Court") to recover his losses. The Seoul District Court rejected the claim.[11] On 29 September 2011, the Seoul High Court reversed that decision. The Seoul High Court entered judgment against Mr Spackman (and other defendants jointly and severally) for KRW5,207,884,800 (approximately US$4.6m)[12] with interest of 5% p.a. from 6 May 2001 to 29 September 2011, and interest of 20% p.a. from 30 September 2011 until the amount was paid in full. I refer to this as the "Seoul High Court Judgment". Mr Spackman, among others, appealed to the Korean Supreme Court.[13]

8 On 31 October 2013, the Korean Supreme Court dismissed the appeal as it related to Mr Spackman while allowing the appeals by the other defendants ("the Korean Supreme Court Judgment"), as it found that Mr Spackman was deemed to have admitted to the Plaintiff's claim as he had not participated in

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9 SOC at para 9.

10 SOC at paras 10–11.

11 SOC at para 12.

12 John Han's 3rd Affidavit at p 162.

13 Mr Spackman's Defence (Amendment No 4) ("Spackman Defence") at para 22(c).

the Seoul High Court proceedings.[14] The exact nature of the Korean Supreme Court's decision is a matter of some contention, but it suffices to note here the substantive result was that Mr Spackman was held liable for the above sum. There is, however, also a question of whether the Korean Supreme Court Judgment included the interest described above. In allowing the appeal by the other defendants, the Korean Supreme Court remanded their cases to the Seoul High Court, which then found that these other defendants were not liable. This decision was upheld by the Korean Supreme Court in another appeal.[15]

9 On 26 April 2017, Mr Spackman applied to the Seoul High Court to reopen the case. The Seoul High Court declined to do so. This decision was affirmed by the Korean Supreme Court on 30 May 2018.[16]

The New York proceedings

10 The Plaintiff brought enforcement actions in multiple jurisdictions. One set of proceedings in New York, in particular, has been relied upon by the Plaintiff in Suit 211. On 23 May 2017, the Plaintiff commenced proceedings in New York to enforce the Seoul High Court Judgment. On 11 September 2018, he obtained summary judgment against Mr Spackman in the Supreme Court of the State of New York for the sum of US$13,827,168.25 and post-judgment interest of 9% p.a. on the basis of the Seoul High Court Judgment.[17]

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14 John Han's 3rd Affidavit at p 59.

15 Spackman Defence at para 22(d).

16 SOC at para 15; Spackman Defence at para 24.

17 SOC at para 18; Spackman Defence at para 43.

The BVI proceedings

11 On 4 and 5 February 2019, the Plaintiff obtained discovery orders in aid of the enforcement of the Korean Judgments in the British Virgin Islands ("BVI"). He subsequently obtained worldwide freezing order against the BVI Companies on 11 April 2019 (the "BVI Injunctions"). On 18 April 2019, the Plaintiff filed papers to commence a claim for the recognition and enforcement of the Korean Judgments in the BVI.[18]

The Hong Kong proceedings

12 The Plaintiff had also begun proceedings in Hong Kong for the recognition of the Korean Judgments on 15 June 2016 (*ie*, before the New York proceedings).[19] Subsequently, the Plaintiff also applied for and obtained an *ex parte* worldwide *Mareva* injunction against Mr Spackman, Mr Lee, Azur and Trinity in Hong Kong on 3 June 2019 ("the HK Injunction").[20] This was *after* the Plaintiff had obtained the *ex parte Mareva* injunctions against Mr Spackman, Mr Lee and the BVI Companies in Singapore (see [16] below).

13 On 4 June 2019, the Plaintiff filed an application for the continuation of the HK Injunction, while Mr Spackman filed an application on 11 June 2019 for the HK Injunction to be set aside. These applications were heard on 15 September 2020 and the judgment in these proceedings was delivered by the Hong Kong Court of First Instance in *Sang Cheol Woo v Yoo Shin Choi (naturalized name Charles C Spackman) and others* [2020] HKCFI 2706 ("the

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18 Plaintiff's 7th Affidavit at para 19(c).

19 Plaintiff's 6th Affidavit at para 19(d)

20 SOC at para 28(c)(1).

HK Judgment") on 20 October 2020. The HK Injunction was for the sum of KRW15,886,902,275.51: HK Judgment at [2]. In it, the court came to the conclusion, *inter alia*, that (at [68]):

> … [T]he irresistible inference to be drawn from the evidence presented in the present case is that [Mr Spackman] has gone to great lengths to *evade* adjudged liability since 2011. The fact that *Mareva* applications had to be made in different jurisdictions in succession (in the BVI, Singapore and Hong Kong in 2019) to preserve assets were dictated and necessitated by changes in circumstances as new evidence came to light.

However, I observe at this point that the HK Judgment dealt only with Mr Spackman, Mr Lee, and two of the BVI Companies. Given the scope of the dispute in that case, the Hong Kong court naturally did not consider any claims of conspiracy in relation to Funvest and PVS.

14 On 16 June 2020, the Plaintiff also obtained an injunction against Funvest and SMG(HK) preventing any change in SMG(HK)'s register of members in relation to Funvest's shareholding: HK Judgment at [37].

Procedural history

15 The Plaintiff filed Suit 211 in the Singapore High Court on 25 February 2019. The original Statement of Claim was premised entirely on the Korean Supreme Court Judgment and sought (a) payment of the sum of KRW5,207,884,800 due under the Korean Supreme Court Judgment; (b) interest on the said sum at 5% p.a. from 5 June 2001 to 29 September 2011, and at 20% p.a. from 30 September 2011 until the entire amount was paid in full;

and (c) further or in the alternative, interest under s 12 of the Civil Law Act (Cap 43, 1999 Rev Ed).[21]

The first set of injunctions

16 On 22 April 2019, the Plaintiff applied for *ex parte* injunctions against Mr Spackman, Mr Lee, Azur, DVG, Trinity and GD Enterprise in HC/SUM 2051/2019. The various injunctions can be summarised as follows:

S/N	Party	Injunction	Order
1.	Mr Spackman	Worldwide *Mareva*	HC/ORC 2728/2019 ("ORC 2728/2019")
2.	Mr Lee	Worldwide *Mareva*	HC/ORC 2737/2019 ("ORC 2737/2019")
3.	Azur	Domestic *Mareva*	HC/ORC 2721/2019
4.	DVG	Domestic *Mareva*	HC/ORC 2729/2019
5.	Trinity	Domestic *Mareva*	HC/ORC 2738/2019
6.	GD Enterprise	Domestic *Mareva*	HC/ORC 2736/2019

17 On 15 May 2019, in HC/SUM 2528/2019 ("SUM 2528/2019"), Mr Spackman applied to set aside the Writ of Summons and service of the Writ, as well as to discharge or set aside various orders pertaining to service out of the jurisdiction and substituted service. In the same summons, he also applied for ORC 2728/2019, *ie*, the worldwide *Mareva* injunction which had been made against him, to be discharged or set aside. On 21 May 2019, Mr Spackman

[21] Statement of Claim (Original) dated 25 February 2019 at pp 5–6.

applied again in HC/SUM 2596/2019 ("SUM 2596/2019") to set aside ORC 2728/2019.

18 On 14 June 2019, in HC/SUM 3002/2019 ("SUM 3002/2019"), the Plaintiff applied for declarations that the obtaining of freezing orders in Hong Kong by him against Mr Spackman and Mr Lee on 3 June 2019 was not in breach of the undertakings provided in ORC 2728/2019 and ORC 2737/2019.

19 SUM 2528/2019, SUM 2596/2019 and SUM 3002/2019 were heard between July and October 2019. In relation to SUM 2528/2019, I decided on 24 July 2019 to dismiss the applications to set aside the writ and its service out of the jurisdiction, but left open the issue of the *Mareva* injunctions which were then dealt with together under SUM 2596/2019 (see HC/ORC 2474/2020). Judgment in SUM 2596/2019 and SUM 3002/2019 was reserved on 21 October 2019. While the decision on these applications was pending, the Plaintiff brought an application under O 14 r 1 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("ROC") in HC/SUM 5616/2019 for summary judgment against Mr Spackman. On 23 December 2019, the Assistant Registrar granted Mr Spackman unconditional leave to defend (HC/ORC 7/2020). The Plaintiff appealed against this decision in HC/RA 12/2020. The appeal was dismissed by the High Court on 14 February 2020 (HC/ORC 1370/2020).

20 On 30 March 2020, pursuant to SUM 2596/2019, the High Court set aside the injunctions against Mr Spackman, Mr Lee and the BVI Companies, as well as the orders joining Mr Lee and the BVI Companies to Suit 211 (HC/ORC 2489/2020). In relation to SUM 3002/2019, the application was dismissed (HC/ORC 2454/2020). The Plaintiff then sought leave to appeal against these decisions, but was rejected by both the High Court (in HC/SUM 1696/2020 and HC/SUM 1697/2020) and the Court of Appeal (in

CA/OS 23/2020). I observe that the grounds for setting aside the injunctions in that application (summarised by the Court of Appeal as an absence of a real risk of dissipation and material non-disclosure[22]) do not have a bearing on the merits of the present applications.

Involvement of second to fifth defendants

21 On 20 May 2020, the Plaintiff brought the following applications:

(a) HC/SUM 2033/2020 ("SUM 2033/2020"), another application for an *ex parte* injunction against Funvest in relation to the sale or transfer of 6,353,968 shares in SMG(HK) and the sales proceeds thereof;

(b) HC/SUM 2034/2020 ("SUM 2034/2020") for leave to amend the Writ of Summons and the Statement of Claim to include the second to fifth defendants and to include new causes of action in unlawful and lawful means conspiracy ("the Conspiracy Claims") and new relief on the basis of those causes of action; and

(c) HC/SUM 2058/2020 ("SUM 2058/2020"), an *inter partes* application for an injunction against Funvest also in relation to the sale or transfer of 6,353,968 shares in SMG(HK) and the sales proceeds thereof, and/or a domestic *Mareva* injunction.

22 The *ex parte* injunction against Funvest was granted on 27 May 2020 in SUM 2033/2020 (see HC/ORC 2717/2020, HC/ORC 2718/2020 and HC/ORC 2726/2020).

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22 See Minute Sheet for CA/OS 23/2020 dated 25 September 2020.

23 The second to fifth defendants were added to the proceedings by way of an amendment to the Writ and Statement of Claim on 8 July 2020, pursuant to HC/ORC 3751/2020 in SUM 2034/2020. The decision of the Assistant Registrar granting leave to amend the pleadings was appealed against on 20 July 2020 by Mr Spackman in HC/RA 148/2020. I dismissed HC/RA 148/2020 on 17 September 2020.[23] As a result, the Conspiracy Claims were accepted to be rightly added to the Statement of Claim and were part of the proceedings against Funvest and PVS, and the present applications were considered on this basis.

24 On 22 July 2020, Funvest filed HC/SUM 3020/2020 ("SUM 3020/2020") seeking, in essence, to set aside the *ex parte* injunction obtained against it in SUM 2033/2020, to set aside service of the Writ of Summons on it, and for the proceedings to be stayed. I dismissed SUM 3020/2020 on 5 November 2020 and reserved costs to be dealt with together with the application in SUM 2058/2020 (see HC/ORC 6177/2020).[24]

25 In relation to Funvest, the only application remaining outstanding, which I deal with in the present judgment, is the Plaintiff's application in SUM 2058/2020, *ie*, the Plaintiff's application for an *inter partes* injunction against Funvest.

Involvement of sixth to ninth defendants

26 On 6 August 2020, the Plaintiff filed HC/SUM 3263/2020 ("SUM 3263/2020") seeking *ex parte* injunctions against PVS. In relation to Plutoray, the Plaintiff sought an injunction in relation to KRW11,507,936,000,

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23 Transcript 17 September 2020 at p 122, ln 12.

24 Transcript 5 November 2020 at p 143, ln 3–5.

being the sales proceeds of 5,753,968 shares in SMG(HK). In relation to Vaara and Starlight, the injunctions were in relation to KRW600,000,000, being the sales proceeds of 300,000 SMG(HK) shares. On 14 August 2020, these injunctions were granted in HC/ORC 4421/2020 ("ORC 4421/2020") and HC/ORC 4424/2020 ("ORC 4424/2020").

27 On the same day, the Plaintiff filed SUM 3430/2020, an application for *inter partes* injunctions against PVS.

28 On 15 September 2020, PVS filed SUM 3968/2020, seeking to set aside the injunction granted pursuant to SUM 3263/2020.

29 While the proceedings relating to the above and other applications were ongoing, the sixth to ninth defendants (which includes PVS) were added to the proceedings by way of an amendment to the Writ of Summons and Statement of Claim. Leave was granted to amend on 30 September 2020 by the Assistant Registrar (HC/ORC 5630/2020 in HC/SUM 3259/2020) and the amended pleadings were filed on 2 October 2020. This was done while the present applications were being heard. Since nothing turns on this, I simply refer to the sixth to ninth defendants also as defendants to these proceedings throughout this judgment.

30 The applications which remain for determination are therefore:

(a) the Plaintiff's applications for (i) an *inter partes* injunction against Funvest (SUM 2058/2020), and (ii) injunctions against PVS (SUM 3430/2020); and

(b) Plutoray's, Vaara's, and Starlight's application to set aside the *ex parte* injunctions against them (SUM 3968/2020).

The applicable law

31 I turn to set out, in broad strokes, the applicable law on interim injunctions and *Mareva* injunctions. I deal with the specific points of contention below, and focus only on the general framework within which the disputes have been fought.

Interim injunctions

32 The Plaintiffs relied on both O 29 r 1 and r 2 of the ROC for the interim injunctions against Funvest and PVS. O 29 r 1(1) of the ROC reads:

> **1.**—(1) An application for the grant of an injunction may be made by any party to a cause or matter before or after the trial of the cause or matter, whether or not a claim for the injunction was included in that party's originating process, counterclaim or third party notice, as the case may be.

33 The test for whether an interim injunction will be granted is whether (a) there is a serious issue to be tried; and (b) the balance of convenience lies in favour of granting the interim injunction: *American Cyanamid Co v Ethicon Ltd* [1975] AC 396 ("*American Cyanamid*"). As the Court of Appeal stated in *Chuan Hong Petrol Station Pte Ltd v Shell Singapore (Pte) Ltd* [1992] 2 SLR(R) 1 at [88]:

> … [A] fundamental principle is that the court should take whichever course appears to carry the lower risk of injustice if it should turn out to have been wrong at trial in the sense of granting relief to a party who succeeds at the trial. …

34 Order 29 r 2 of the ROC (as relevant) reads:

> **Detention, preservation, etc., of subject-matter of cause or matter (O. 29, r. 2)**
>
> **2.**—(1) On the application of any party to a cause or matter, the Court may make an order for the detention, custody or preservation of any property which is the subject-matter of the cause or matter, or as to which any question may arise therein,

> or for the inspection of any such property in the possession of a party to the cause or matter.
>
> (2) For the purpose of enabling any order under paragraph (1) to be carried out, the Court may by the order authorise any person to enter upon any immovable property in the possession of any party to the cause or matter.
>
> (3) Where the right of any party to a specific fund is in dispute in a cause or matter, the Court may, on the application of a party to the cause or matter, order the fund to be paid into Court or otherwise secured.
>
> (4) An order under this Rule may be made on such terms, if any, as the Court thinks just.
>
> …

The scope of O 29 r 2 is a matter of some dispute in this case and I address these arguments below.

Mareva injunctions

35 In relation to the Plaintiff's applications for *Mareva* injunctions, the applicable criteria are clear (see *Singapore Civil Procedure 2020* vol 1 (Chua Lee Ming gen ed) (Sweet & Maxwell, 10th Ed, 2020) ("*White Book*") at para 29/1/58):

> (a) there must be a valid cause of action over which the court has jurisdiction;
>
> (b) there must be a good arguable case on the merits of the plaintiff's claim;
>
> (c) the defendant must have assets within the jurisdiction; and
>
> (d) there is a real risk that the defendant will dissipate his assets to frustrate the enforcement of an anticipated judgment of the court.

Parties' cases

SUM 2058/2020

36 The Plaintiff's case against Funvest is, in essence, that Funvest received 6,353,968 shares in SMG(HK), which are Mr Spackman's assets, from Republic Park, and that Funvest's conduct in relation to these shares was in furtherance of a conspiracy to injure the Plaintiff.[25] On that basis, the Plaintiff sought an injunction against Funvest. Specifically, in SUM 2058/2020:

(a) The Plaintiff sought an interim injunction preventing Funvest from: (i) selling or transferring 6,353,968 shares in SMG(HK); (ii) disposing any of the KRW12,707,936,000 which are the sales proceeds of the shares at KRW2,000 per share (in the event that all or part of the 6,353,968 shares have been sold/transferred to ESA); and (iii) causing the sale proceeds to be transferred by ESA or any other party directly to a third party. Further, the Plaintiff sought disclosure of various information pertaining to those shares and to the relationships between the various entities.

(b) Further, or in the alternative, the Plaintiff also applied for a domestic *Mareva* injunction.

37 Funvest contended that the injunction(s) should not be granted. In relation to the interim injunction, Funvest argued that the Plaintiff would be entitled to restrain the use of a specific asset only if it had a specific proprietary interest in that asset.[26] Yet, the Plaintiff was not claiming and did not in fact

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25 SOC at para 28(j).

26 Funvest's Written Submissions dated 9 September 2020 ("Funvest WS") at para 3.1.2.

have a proprietary interest in the SMG(HK) shares or the sales proceeds thereof.[27] The Plaintiff also could not rely on O 29 r 2 of the ROC, as: (a) this would not accord with the purpose of O 29 r 2; (b) the SMG(HK) shares and sale proceeds do not satisfy the requirements of O 29 r 2 as they are not physical items that are the subject matter of the dispute; (c) the sale proceeds for the 6,353,968 SMG(HK) shares have intermingled with the proceeds for the rest of the 8,551,936 SMG(HK) shares that was sold to ESA; (d) the 6,353,968 shares are no longer in Funvest's possession; and (e) the Plaintiff has not claimed any proprietary interest in the SMG(HK) shares.[28]

38 In any event, Funvest argued that the requirements for an interim injunction are not met. These arguments overlapped with its arguments for why the *Mareva* injunction should not be granted.

(a) First, the Plaintiff has failed to raise a good arguable case, or even a serious issue to be tried, in relation to the Conspiracy Claims.[29]

(b) Second, there is no real risk that Funvest's assets would be dissipated such that any judgment obtained would not be enforceable.[30]

(c) Third, the balance of convenience lies in favour of Funvest.[31]

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27 Funvest WS at para 3.1.3.

28 Funvest WS at para 3.1.4.

29 Funvest WS at para 3.2.1.

30 Funvest WS at para 3.3.1.

31 Funvest WS at para 3.4.1.

(d) Fourth, the injunctions sought are unnecessarily wide and oppressive.[32]

39 Funvest argued in the alternative that if one or both injunctions are granted, the Plaintiff should be made to fortify his undertaking as to damages.[33]

SUM 3430/2020 and SUM 3968/2020

40 The Plaintiff's case against PVS (both in seeking the *inter partes* injunction in SUM 3430/2020 and in resisting the setting aside application in SUM 3968/2020) also relates to the shares in SMG(HK). It is his case that:[34]

(a) Vaara and Starlight had each received 300,000 shares from GD Enterprise on 18 August 2017, and then transferred those shares (together with one additional share in SMG(HK) that Vaara had received separately) to Republic Park on 24 September 2019, which in turn transferred them to Funvest.

(b) Plutoray had received 2,578,968 shares in SMG(HK) from Trinity and 3,175,000 shares in SMG(HK) from Azur on 24 April 2019, and subsequently transferred the total of 5,753,968 shares to Republic Park on 24 September 2019, which were also then transferred in turn to Funvest.

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32 Funvest WS at para 3.5.1.

33 Funvest WS at para 3.6.1.

34 Plaintiff's Written Submissions dated 9 September 2020 in SUM 2058/2020 ("PWS 2058") at p 23.

41 In SUM 3430/2020, the Plaintiffs sought interim injunctions against PVS, and, further or in the alternative, *Mareva* injunctions against the same parties.

42 The Plaintiff emphasised: (a) the nominal value of the transfers between the BVI Companies, PVS, Republic Park and Funvest; (b) the timings of the transfers in relation to enforcement proceedings or discovery of the existence of certain entities and their links to Mr Spackman; (c) the links that those entities and persons have with Mr Spackman; and (d) the "incredible excuses" given by Mr Spackman and Mr Kim for the transfers.[35] He contended that there was no legitimate reason for the transfers. The Plaintiff also argued that the Conspiracy Claims against PVS were independent of the enforcement claim on the basis of the Judgments,[36] and has taken the position that the issue of the Judgments is not "at all relevant or material" to these applications against PVS.[37]

43 In response, PVS characterised the Plaintiff's application against them as being based on the (false) impression that they had received monies for the transfer of the SMG(HK) shares, and that he was using the injunctions primarily to pursue his enforcement against Mr Spackman.[38] As the injunctions against the first to fourth defendants have been discharged, it would follow that injunctive relief should not be granted against PVS, which are further removed from the alleged conspiracy.[39]

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35 Plaintiff's Written Submissions dated 26 October 2020 in SUM 3430/2020 and SUM 3968/2020 ("PWS 3430 and 3968") at para 12.

36 PWS 3430 and 3968 at para 51.

37 PWS 3430 and 3968 at para 96(c).

38 PVS's Written Submissions dated 26 October 2020 ("PVS WS") at para 5.

39 PVS WS at paras 7–9.

44 In respect of the setting aside application in SUM 3968/2020, PVS argued that the wrong test was applied when the injunction was granted as the injunction was, in truth, a *Mareva* injunction.[40] They also submitted that the Plaintiff had failed to make full and frank disclosure of material facts in his application.[41] Furthermore, they argued that even if the test for an interim injunction was to apply, the Plaintiff's case did not satisfy the test for an injunction to be granted, as there was no serious issue to be tried, and the balance of convenience did not favour granting an injunction.[42] PVS also argued that the Plaintiff had obtained the *ex parte* injunction for a collateral motive[43] and the Plaintiff had failed to give the required undertakings for the *ex parte* injunctions.[44]

45 In respect of the Plaintiff's application for *inter partes* injunctions in SUM 3430/2020, PVS relied on similar arguments insofar as the injunctions sought were interim injunctions and not *Mareva* injunctions.[45] Insofar as the injunctions sought were *Mareva* injunctions, PVS submitted that (a) the Court of Appeal had found that there was no risk of dissipation of Mr Spackman's assets;[46] (b) there are no assets for any injunction to bite on;[47] (c) the Plaintiff has not adduced evidence of dissipation;[48] (d) the Plaintiff was abusing the

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40 PVS WS at paras 50−54.

41 PVS WS at paras 55–83.

42 PVS WS at paras 84ff.

43 PVS WS at paras 122, 209–236.

44 PVS WS at paras 123–129.

45 PVS WS at para 131, 84–120.

46 PVS WS at paras 132–139.

47 PVS WS at paras 140–180.

48 PVS WS at paras 181–204.

court's process;[49] and (e) for similar reasons as above, there is no good arguable case on the facts.[50]

Issues for determination

46 There are, in effect, two sets of applications before me. One, in SUM 2058/2020, involves the Plaintiff and Funvest. The other, in SUM 3430/2020 and SUM 3968/2020, involves the Plaintiff and PVS. Although the allegations made by the Plaintiff against Funvest and PVS deal with the same series of transactions, each set of proceedings is distinct, since Funvest has (strictly speaking) no interest in the outcome of SUM 3430/2020 and SUM 3968/2020, and PVS has no interest in the outcome of SUM 2058/2020, except insofar as the findings made by the court in one may be relevant to the other. Therefore, while each application must be determined on its own merits, I also pay particular attention to making consistent findings throughout.

47 I will address the issues in this order (noting that each of these issues contains further sub-issues):

(a) Has the Plaintiff showed a good arguable case and/or a serious issue to be tried in respect of the claims against Funvest and PVS?

(b) In relation to SUM 2058/2020,

(i) can and should the interim injunction against Funvest be granted?

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49 PVS WS at paras 205–253.

50 PVS WS at para 254.

(ii) should the *Mareva* injunction against Funvest be granted?

(c) In relation to SUM 3430/2020 and SUM 3968/2020,

(i) can and should the interim injunctions against PVS be granted?

(ii) should the *Mareva* injunctions against PVS be granted?

48 In relation to SUM 3430/2020 and SUM 3968/2020, I will deal primarily with the issue of the *inter partes* injunctions, given how the matters have proceeded. If I decide that no *inter partes* injunctions should be granted, I would accordingly discharge the *ex parte* injunctions and make the necessary consequential orders.

The merits of the claims against Funvest and PVS

49 There are two claims at issue in Suit 211. First, there is the claim for enforcement of the Korean Judgments in Singapore against Mr Spackman ("the Enforcement Claim"). Second, there are the Conspiracy Claims (referred to in the plural because the pleaded claim is in both *unlawful* and *lawful* means conspiracy). As against Funvest, the Plaintiff relied on the Conspiracy Claims.[51] As against PVS, the Plaintiff also relied only on the Conspiracy Claims, as their repeated arguments that the Conspiracy Claims are independent of the Enforcement Claim emphasised. Conversely, counsel for PVS argued that the underlying *merits* of the Enforcement Claim must also be considered, since if the Korean Judgments could not be enforced in Singapore anyway, no loss can

[51] PWS 2058 at para 168.

be said to have been caused to the Plaintiff by the alleged conspiracy.[52] I deal, therefore, primarily with the Conspiracy Claims, but touch on the merits of the Enforcement Claim where relevant to the merits of the Conspiracy Claims. However, I state for the avoidance of doubt that in relation to both the Enforcement Claim and Conspiracy Claims, any discussion of the merits in this judgment is provisional and based on the evidence as it stands before trial. The actual merits of these claims are matters for the trial judge to determine after trial. I am concerned here only with whether the threshold for interim and/or *Mareva* injunctions have been satisfied on the affidavit evidence presently before me.

The applicable standards

50 I bear the following two standards in mind as I turn to consider the merits of the Conspiracy Claims:

(a) The standard in relation to an interim injunction is that there must be a serious issue to be tried. The threshold is a low one – all it requires is that the claim is not frivolous or vexatious: *American Cyanamid* at 407. The court will only investigate the prospects of success to a limited extent – "[a]ll that has to be seen is whether he has prospects of success which, in substance and reality, exist" (*White Book* at para 29/1/12).

(b) The standard in relation to *Mareva* injunctions is a different one. There must be a good arguable case on the merits, meaning one which is "more than barely capable of serious argument, but not necessarily one which the judge considers would have a better than 50 per cent

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52 Transcript 5 November 2020 at p 14, ln 2–16.

chance of success": *Bouvier, Yves Charles Edgar and another v Accent Delight International Ltd and another and another appeal* [2015] 5 SLR 558 ("*Bouvier*") at [36].

The elements of the torts of unlawful and lawful means conspiracy

51 There is no real dispute at present as to the elements of the torts of unlawful and lawful means conspiracy. As the Court of Appeal held in *Quah Kay Tee v Ong and Co Pte Ltd* [1996] 3 SLR(R) 637 at [45]:

> The tort of conspiracy comprises two types: conspiracy by unlawful means and conspiracy by lawful means. A conspiracy by unlawful means is constituted when two or more persons combine to commit an unlawful act with the intention of injuring or damaging the plaintiff, and the act is carried out and the intention achieved. In a conspiracy by lawful means, there need not be an unlawful act committed by the conspirators. But there is the additional requirement of proving a "predominant purpose" by all the conspirators to cause injury or damage to the plaintiff, and the act is carried out and the purpose achieved.

52 In other words, the elements of the tort are:

(a) an agreement between two or more persons to do a certain act;

(b) with the intention of or for the purpose of injuring or damaging the plaintiff (if the act is unlawful) or with the predominant purpose of doing so (if the act is lawful); and

(c) the acts were done pursuant to that agreement, resulting in loss or damage to the plaintiff.

The factual basis for the Plaintiff's arguments

53 The Plaintiff's case is primarily based on inferences to be drawn from the facts concerning various transfers of SMG(HK) shares. Hence, before

turning to the specific elements, I deal with the various arguments raised in relation to the inferences to be drawn. As noted above, the Plaintiff's case centred on the inferences to be drawn from: (a) the undervalue transfers; (b) the timings of the transfers; (c) the links between PVS and Funvest, on the one hand, and Mr Spackman, on the other; and (d) the "incredible excuses" given by Mr Spackman and Mr Kim for the transfers.[53]

The share transfers

54 The *fact* of the share transfers is not disputed by the various defendants involved in these applications. I set the relevant transfers out here:[54]

(a) On 18 August 2017:

(i) 300,000 shares were transferred from GD Enterprise to Starlight;

(ii) 300,000 shares were transferred from GD Enterprise to Vaara; and

(iii) 200,000 shares were transferred from DVG to Constellation Agency Pte Ltd.

(b) On 21 November 2017, 4,000,000 shares were transferred from GD Enterprise to Azur.

(c) On 22 February 2018:

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53 Plaintiff's Written Submissions dated 26 October 2020 in SUM 3430/2020 and SUM 3968/2020 ("PWS 3430 and 3968") at para 12.

54 PWS 2058 at p 23.

(i) 3,503,850 shares were transferred from GD Enterprise to Trinity;

(ii) 383,333 shares were transferred from DVG to Trinity; and

(iii) 250,000 shares were transferred from DVG to Zymmetry Investments Ltd.

(d) On 24 April 2019,

(i) 2,578,968 shares were transferred from Trinity to Plutoray; and

(ii) 3,175,000 shares were transferred from Azur to Plutoray.

(e) On 24 September 2019,

(i) 5,753,968 shares were transferred from Plutoray to Republic Park;

(ii) 300,001 shares were transferred from Vaara to Republic Park; and

(iii) 300,000 shares were transferred from Starlight to Republic Park.

(f) On 21 November 2019, 6,353,968 shares were transferred from Republic Park to Funvest.

55 From the above, it is clear that all of the shares that eventually made their way to PVS were initially held by GD Enterprise. Accordingly, all of the shares held by Republic Park and then Funvest (which received all the shares from PVS) were initially held by GD Enterprise.

56 It is also not disputed that all of these transfers were for HK$1 per share, except for the transfer of 4,000,000 shares from GD Enterprise to Azur which was for US$1 per share.[55] The Plaintiff emphasised that these were *undervalue* transfers, and referred to evidence provided by Mr Kim in the BVI proceedings that these were indicated as "internal" transfers.[56] In my view, however, Mr Kim's statement to that effect is not entirely probative in this context. While it may be true that characterising certain transfers as "internal" transfers may explain why the consideration for transfer was only HK$1 per share, this does not logically entail that *every subsequent transfer* for that same amount was also an "internal" transfer. The question of how much weight to give to the apparent "undervalue" transfers turns ultimately on the weight to be given to the explanations by the defendants for the transfers themselves.

The relationship between the entities and parties

57 In addition to the facts of these transfers, the Plaintiff seeks to show that the entities involved were related to Mr Spackman. This would justify the finding that the entities had acted in concert to divert and conceal Mr Spackman's assets and prevent enforcement against him.

58 The first category of entities is made up of the BVI Companies, *viz*, GD Enterprise, Azur, DVG and Trinity. As can be seen from the summary of the share transfers above at [54], each of these entities was a part of the chain of share transfers that ultimately led to the consolidation of shares in PVS, followed by Republic Park, and then Funvest. It is the Plaintiff's case that the BVI Companies were essentially holding Mr Spackman's assets, and that they

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55 PWS 2058 at para 16.

56 PWS 2058 at para 16; Plaintiff's 7th Affidavit at paras 56–57.

were controlled by Mr Spackman through Mr Kim and Mdm Kim.[57] I accept that there is a serious issue to be tried, as well as a good arguable case that the BVI Companies were acting either directly or indirectly under the control of Mr Spackman. This is supported by the connection that they had to Mr Spackman through Mr Kim and Mdm Kim, as well as the other factors raised by the Plaintiff in his pleadings and submissions.[58] That, however, only gets the Plaintiff so far, since the relevant parts of the Conspiracy Claims now under consideration in these applications are those relating to PVS and Funvest.

59 The next issue is whether the second category of entities, Funvest and PVS, can be said to be related to Mr Spackman. It is convenient for me to deal first with the Plaintiff's reliance of the findings of the Hong Kong Court of First Instance in the HK Judgment. I note that neither Funvest nor PVS were parties to those proceedings. It follows that the requirements of issue estoppel cannot be met, as there is no "identity between the parties to the two actions that are being compared" (see *Lee Tat Development Pte Ltd v MCST Plan No 301* [2005] 3 SLR(R) 157 at [14]–[15]) and I do not find that Funvest or PVS are bound by any of the findings in the HK Judgment.

60 I first consider Plutoray. The Plaintiff highlighted the following facts: (a) Plutoray's registered address was the residential address of one Mr Jang Jeong Seok ("Mr Jang"); (b) Mr Jang was a director of PVS and Funvest (from 7 May 2018 to 16 December 2019); (c) one Mr Jung Yunyoung ("Mr Jung") was the second director of Plutoray as well as company secretary of Funvest (up to 16 December 2019) and the current company secretary of Vaara; (d) Mr Jang

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57 SOC at para 23.

58 PWS 3430 and 3968 at para 15.

acted suspiciously on 18 May 2020 when the letter informing Funvest of the Conspiracy Claims was served; and (e) Mr Jang was a shareholder and a director of a company, Constellation, before it was acquired by Spackman Entertainment Group Ltd ("SEGL"), a publicly-listed company in Singapore of which Mr Spackman was CEO and director.[59]

61 Taking the Plaintiff's case at its highest, I accept that the facts could potentially give rise to the inference that PVS and *Funvest* were closely connected. However, the facts do not establish (at present) a very close link between Mr Jang and *Mr Spackman*. The fact that they may have interacted in relation to the acquisition of Constellation by SEGL does not, in and of itself, suggest that Mr Spackman had any control over or close relationship with Mr Jang. Even taking the Plaintiff's argument at its highest in relation to the alleged suspicious activity on 18 May 2020, that would only go to establishing some sort of link between PVS and Funvest, but not between PVS and Mr Spackman or the BVI Companies.

62 In my judgment, the Plaintiff faces the same issues in relation to Vaara and Starlight. The facts regarding Mr Jang's and Mr Jung's involvement in these companies do not, without more, support an inference that they (and, relatedly, Vaara and Starlight) were under Mr Spackman's influence or control. While the Plaintiff makes a point that Mr Jang appears to be connected with every company in these proceedings,[60] it is PVS's case that Mr Jang was "in the business of providing nominee directorships and company secretarial services

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59 Plaintiff's 12th Affidavit dated 6 August 2020 at p 13.

60 PWS 3430 and 3968 at para 20(e).

to entities registered and incorporated in Singapore".[61] I do not make a conclusive finding as to this, but simply note that the Plaintiff's case in relation to PVS is almost entirely based on Mr Jang's involvement and the present evidence as to his connection with Mr Spackman is not entirely strong. Further, while the Plaintiff sought to link Mr Kim to Starlight through personal connections and an email address which appeared to be his,[62] the link with Mr Kim is one step removed from Mr Spackman, and the *nature* of the connection is not entirely clear. Therefore, in assessing whether there is a good arguable case or a serious issue to be tried, I am unable to give significant weight to the Plaintiff's allegations as to PVS's connection with Mr Spackman.

63 As for Funvest, the individuals involved appear to be one Mr Daull Nicolas Marie Andre ("Mr Daull") and Mr Jang. My observations in relation to Mr Jang apply here as well. As Funvest argued, Funvest itself was multiple degrees removed from Mr Spackman.[63] I acknowledge that there is something odd about Mr Daull's responses to the Plaintiff when the Conspiracy Claims were first made known to Funvest,[64] but that is, in and of itself, not enough to show a link to Mr Spackman – that conduct is sufficiently equivocal and does not point entirely to a connection between Funvest and Mr Spackman.

64 In summary, while I accept that there is evidence to show that the BVI Companies were operated under the influence or control of Mr Spackman, the same cannot be said of PVS and Funvest. This does not entirely prevent the

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61 Choi Jihoon's 1st Affidavit dated 21 September 2020 at para 16(c).

62 PWS 3430 and 3968 at para 23.

63 Funvest WS at para 3.2.4.

64 PWS 2058 at paras 22–23.

Plaintiff from showing a good arguable case or a serious issue to be tried, since the issue of conspiracy is not entirely one and the same with the issue of the relationship between the entities. However, this is clearly a factor that must be considered given the emphasis that the Plaintiff placed on the relationship that these entities have with Mr Spackman in his case.

The timing of the transfers

65 The Plaintiff also emphasised the timings of the transfers:[65]

(a) The transfers on 18 August 2017 from GD Enterprise to Starlight and Vaara happened three months after the New York Proceedings were commenced.

(b) The transfers on 21 November 2017 from GD Enterprise to Azur took place one day after the Plaintiff was made aware of GD Enterprise and DVG pursuant to a visit to Triolink Corporate Services Limited ("Triolink"), a registered agent for GD Enterprise, by the Plaintiff's Hong Kong lawyers ("K&K").

(c) Three months after this discovery, GD Enterprise and DVG transferred all their remaining shareholding in SMG(HK) (almost four million shares) to Trinity at an undervalue.

(d) After the Plaintiff obtained the BVI Injunctions, the transfers of shares from Trinity and Azur to Plutoray happened on 24 April 2019.

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65 PWS 2058 at para 17.

(e) When the Plaintiff became aware of the transfers to Plutoray, the shares were then transferred to Republic Park on 24 September 2019, and then to Funvest on 21 November 2019.

66 In my view, the timings of some of the transfers could potentially give rise to some inference that the transfers were intended to get around the various injunctions, in relation to the November 2017 and April 2019 transfers. These two sets of transfers occurred at around the time that various efforts were being made in various jurisdictions to enforce the Judgments against Mr Spackman. However, in my view, the weight to be given to this factor is rather limited, and this is only probative if there are other good reasons for inferring a conspiracy as alleged. Further, the weight to be given to these "coincidental" timings is also limited by the absence of evidence as to how long such transfers would usually take to execute. It cannot be ruled out entirely that the transfers that followed closely after certain developments in the case against Mr Spackman were already planned or arranged *before* those developments were made known.

67 As for the other transfers, I am unable to place much weight on the alleged coincidences in timing. The periods of time between when the relevant defendants became aware of the enforcement action and the transfers themselves were sufficiently long and were not uniform in each instance. For example, the Plaintiff's contention in relation to the transfers to Republic Park in September 2019 did not make much sense given that the Plaintiff had become aware of the transfers to Plutoray in *May* of that year, nearly four months before the transfers in question.[66] This made it difficult for me to accept the argument

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66 Plaintiff's 7th Affidavit at para 85(d).

that the transfers were made by the relevant defendants in *response* to the specific actions by the Plaintiff.

The alleged sale of shares to ESA and the reasons for the transfers

68 I pause to take stock of the analysis so far. First, I have found that the mere fact of the undervalue transfers was not necessarily probative, and the weight to be given to this fact turned on the explanations given for the transfers, which I turn to in a moment. Second, I have found that as for PVS and Funvest, the evidence does not disclose that these entities (in contrast to the BVI Companies) were closely related to or acting under the direct control of Mr Spackman. Third, in my view, the weight to be given to the timings of the transfers was not significant, and some of the transfers could not be linked to developments in Mr Spackman's case. I turn then to perhaps the most important part of the Plaintiff's case, which is the alleged implausibility of PVS's and Funvest's explanations for the share transfers.

69 While the Plaintiff characterised the transfers as an attempt to evade enforcement, PVS and Funvest argued instead that they were part of a legitimate series of commercial transactions. Funvest has taken the position that it is unable to comment on the transfers involving the BVI Companies,[67] while PVS has sought to rely on explanations that they have provided relating to those companies. Funvest and PVS, however, do not appear to take any inconsistent positions. In the following, I break down the explanations in the three key stages of the transfers: (a) from GD Enterprise to Vaara and Starlight, as well as Azur and Trinity; (b) from Azur and Trinity to Plutoray; and (c) from Plutoray, Vaara and Starlight to Republic Park, and then to Funvest. After setting out each

67 Lee Jong Eun's 1st Affidavit at para 3.1.4.

explanation, I then consider the Plaintiff's objections to the explanation and provide my views. While GD Enterprise, Azur and Trinity were not before me in these applications, I deal with the facts surrounding those transfers as well as they provide the backdrop against which the later transactions occurred.

(1) The first stage

70 The first stage of the transfers was the transfers from GD Enterprise to the BVI Companies, and Vaara and Starlight. The explanations for these are as follows:

(a) In relation to the transfer of shares from GD Enterprise to Vaara, one Mr Kang Sung Wook ("Mr Kang") had agreed to partner with SMG(HK) to further his interests in the Korean entertainment industry. As part of this partnership, Mr Kang received 300,000 SMG(HK) shares from GD Enterprise. He wished to keep these shares in a Singapore company, and Vaara was incorporated on or around 1 March 2017 to receive and hold these shares. Mr Jang was appointed as a nominee director. The shares were then transferred on or around 18 August 2017.[68]

(b) In relation to the transfer of shares from GD Enterprises to Starlight, Mr Choi Ji Hoon ("Mr Choi"), who filed an affidavit on behalf of PVS, deposed that he partnered with SMG(HK) to further his business interests in the Korean entertainment industry. He therefore received 300,000 shares from GD Enterprises, and wished to hold these shares through a Singapore company. Starlight was incorporated on 10 October

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68 Choi Ji Hoon's 1st Affidavit at para 16.

2016 for that purpose and Mr Jang was appointed as the nominee director. The 300,000 shares were then transferred on or around 18 August 2017.[69]

(c) The transfer of shares from GD Enterprises to Azur and Trinity was part of an "internal restructuring".[70]

71 I observe here that even if the Plaintiff's allegations in relation to the transfers to the BVI Companies are accepted entirely, this still would not get the Plaintiff very far. The claim against PVS and Funvest is distinct from the allegations made against the BVI Companies since, as I have noted above, there is not much evidence to show how PVS and Funvest were related to the BVI Companies and/or Mr Spackman. As for the transfers to Vaara and Starlight, in my view, I do not find that the transfers to Vaara and Starlight support either the Plaintiff's or PVS's cases – in and of themselves, the explanations are not implausible, and, in any event, they have to be seen together with the subsequent transfers given the nature of the Conspiracy Claims as a whole.

(2) The second stage

72 The second stage in the transfers was the transfer of shares from Azur and Trinity to Plutoray. The explanation given was that the transfer of shares from Azur and Trinity to Plutoray was caused by Monetary Management Consultancy Limited ("MMCL") enforcing security on a loan owed.[71]

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69 Choi Ji Hoon's 1st Affidavit at paras 24–25.

70 Choi Ji Hoon's 1st Affidavit at para 37.

71 Choi Ji Hoon's 1st Affidavit at paras 43.

73 MMCL was owned by one Mr Yan Ching Suen ("Mr Suen"), a businessman in Hong Kong and Macau, and a friend of Mr Kim's.[72] In December 2015, Mr Kim acquired 9,999,999 SMG(HK) shares through GD Enterprise pursuant to a share swap agreement dated 13 November 2015 signed with SMG(HK) (the "Share Swap Agreement"). Mr Kim's acquisition of the shares under the Share Swap Agreement was financed by a US$1m loan from MMCL and the shares were used as collateral for the MMCL loan.[73] These shares were held by GD Enterprise. As part of an internal restructuring, the shares were transferred to Azur and Trinity in 2018.[74] In or around March 2019, Mr Suen took steps to enforce the MMCL loan. This was before the injunctions were made against the BVI Companies, but Mr Kim only found out about the enforcement after the injunctions were made.[75] Mr Suen's preference was for the SMG(HK) shares to be held in a Singapore company, and he was introduced to Mr Jang for that purpose.[76] MMCL purchased Plutoray,[77] and on 27 March 2019, 3,175,000 shares in SMG(HK) were transferred from Azur to Plutoray for HK$1 per share, and 2,578,968 shares in SMG(HK) were transferred from Trinity to Plutoray for HK$1 per share.[78]

74 The Plaintiff argued that this did not stand up to scrutiny. I highlight some of the key arguments here:

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72 Choi Ji Hoon's 1st Affidavit at para 31.

73 Choi Ji Hoon's 1st Affidavit at paras 35-36.

74 Choi Ji Hoon's 1st Affidavit at para 37.

75 Choi Ji Hoon's 1st Affidavit at para 39.

76 Choi Ji Hoon's 1st Affidavit at para 40.

77 Choi Ji Hoon's 1st Affidavit at para 41.

78 Choi Ji Hoon's 1st Affidavit at para 42.

(a) First, the transfers took place on 24 April 2019, but the promissory notes between MMCL and Azur, and between MMCL and Trinity provided that the loan period is for one year from the date of the respective agreements. This would have meant that the loans would be due only on 14 June 2019[79] and 7 September 2019[80] respectively. Hence, it was not clear that the transfers on 24 April 2019 could be said to be enforcement measures taken under the two promissory notes.[81]

(b) Second, the transfer of shares to GD Enterprise did not appear to be funded by a payment of US$1m as alleged. There are no documents that show that GD Enterprise needed to pay a cash amount for the transfer of SMG(HK) shares.[82]

(c) Third, the bank statement showing a payment of US$1m into Crystal Planet Limited's account does not disclose the identity of the payor.[83]

(d) Fourth, when the SMG(HK) shares were transferred to Plutoray on 24 April 2019, Plutoray did not in fact have any connection with MMCL. Indeed, the company search from ACRA shows that as of 28 May 2019, the only shareholder in Plutoray was one Yoo Jaemin.[84] Yoo Jaemin only ceased to be a shareholder on 3 June 2019.[85] Hence, at the

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79 John Han's 6th Affidavit dated 20 June 2019 ("John Han's 6th Affidavit") at p 81.

80 John Han's 6th Affidavit at p 77.

81 Plaintiff's 7th Affidavit at para 74(c).

82 PWS 2058 at para 12(b).

83 PWS 2058 at para 12(c).

84 Plaintiff's 7th Affidavit at p 653.

85 Plaintiff's 7th Affidavit at p 655.

very earliest, it appears that MMCL only became the shareholder of Plutoray on 3 June 2019.

(e) Fifth, Mr Spackman maintained inconsistent positions as to whether he knew Mr Suen. In his 2nd affidavit in the Singapore proceedings, Mr Spackman deposed that he did not have any dealings with MMCL.[86] However, in his reply submissions in the Hong Kong Proceedings, Mr Spackman then took the position that Mr Suen, who controlled MMCL, was his former business partner.[87]

75 In my view, these factors do raise questions as to the purported enforcement of the loans by MMCL. I also find that the fact that the transfers were for HK$1 per share to be odd in the context of enforcement of security over the shares – it is not clear to me why such payment would have to be made if these transfers were made in the enforcement of security rights. I do not find (and do not need to find) that these are "knock-out blows" in favour of the Plaintiff, but I am satisfied that they raise doubts as to the explanation provided by the relevant defendants and call for an explanation. Given the starting point of undervalue share transactions between Azur and Trinity, on the one hand, and Plutoray, on the other, the absence of a satisfactory explanation at this stage is one factor that I consider in analysing whether the Plaintiff has shown a serious issue to be tried and/or a good arguable case. However, as I go on to observe, this must be seen in the context of all the other facts.

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86 Spackman's 2nd Affidavit dated 2 July 2019 at paras 69-70.

87 Plaintiff's 7th Affidavit at paras 75-79; at p 649.

(3) The third stage

76 The third stage involved the transfers of shares from PVS to Republic Park, and then from Republic Park to Funvest. The explanation given for these transfers is that they were part of a consolidation of shares for sale to ESA ("the Alleged Consolidation").

(a) Sometime around July 2019, ESA wanted to further its business in the Korean entertainment industry. It therefore reached out to SEGL to propose an acquisition of SMG(HK) shares held by SEGL. SEGL, however, was unwilling to sell its shares as it wished to remain the largest shareholder in SMG(HK). Instead, SEGL suggested to ESA to approach other SMG(HK) shareholders to explore if they were willing to sell their shares. ESA thereafter approach one Mr Andrew Nigel Hopkinson ("Mr Hopkinson") to act as a broker for the sale of SMG(HK) shares to ESA. It was ultimately agreed that the SMG(HK) shares would be consolidated from the various sellers before they were sold and transferred to ESA.[88]

(b) Mr Hopkinson then incorporated Republic Park for that purpose. As most of the sellers were from Asia, Mr Hopkinson approached Mr Lee Jong Eun to assist with the consolidation. They managed to consolidate 7,024,686 shares. However, as some of the sellers preferred to deal with a Singapore- or Hong Kong-incorporated company, Mr Hopkinson and Mr Lee were introduced to Mr Jang, and Mr Jang informed them that they could use the entity, Funvest. Republic Park then purchased Funvest on or around 12 November 2019 and Funvest

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88 Choi Ji Hoon's 1st Affidavit at paras 46–49.

was able to consolidate a total of 8,551,936 shares in SMG(HK). All of the shares transferred to Republic Park and/or Funvest were for consideration of HK$1 per share.[89]

(c) Specifically, in relation to PVS, on or around 23 September 2019, each of the entities entered into brokerage agreements on identical terms with Republic Park. On or around 28 November 2019, promissory notes were then issued to PVS on identical terms with a maturity date of 27 November 2021. These promissory notes provided that PVS would be paid the entire amount of the transfer of SMG(HK) shares on 27 November 2021 or 30 days after the completion of the sale and purchase of the SMG(HK) shares.[90]

(d) Funvest entered into a Sale and Purchase Agreement ("SPA") with ESA on 28 November 2019, for the sale of 8,551,936 SMG(HK) shares to ESA for a total of KRW17,103,872,000. The payments to Funvest were to be made in three tranches: (a) KRW3bn to be paid on 28 November 2019; (b) KRW10bn to be paid on 2 December 2019; and (c) the balance of KRW4,103,872,000 to be paid upon registration of ESA as the legal and beneficial owners of the shares.[91] This last payment was, however, delayed due to ESA's financial difficulties and the impact of the COVID-19 pandemic.[92]

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89 Choi Ji Hoon's 1st Affidavit at paras 50–55.

90 Choi Ji Hoon's 1st Affidavit at paras 56–60.

91 Choi Ji Hoon's 1st Affidavit at para 61.

92 Choi Ji Hoon's 1st Affidavit at para 62.

77 The Plaintiff argued that this explanation could not be accepted and that the proper inference to draw from the undervalue share transfers was that there was a conspiracy to assist Mr Spackman in evading enforcement against him by moving his assets away. In support of this, the Plaintiff submitted that:

(a) Both Funvest and ESA appear to be reluctant to complete the SPA. There have been six delays in the completion date. Further, ESA has never been registered as owner of the shares since 29 November 2019, when Funvest had already executed all the documents required for transferring the shares to ESA.[93] Instead, the Plaintiff has pointed to a number of statements or disclosures made by entities related to Mr Spackman and SEGL that the arrangement to partner with ESA was under review and may not proceed. If so, as the Plaintiff argued, there would no longer be any reason for the sale of SMG(HK) shares to ESA.[94] Further, the Plaintiff highlighted that SEGL and ESA were facing regulatory issues, and there were concerns raised by regulatory bodies (including the regulatory arm of the Singapore Exchange), and commentators as to the transactions between SEGL, SMG(HK) and the BVI Companies.[95]

(b) There were a number of inconsistent accounts given as to the status of KRW13bn, being the first two tranches of payments under the SPA.[96] One account given in Mr Lee Jong Eun's 1st Affidavit filed on 16 July 2020 on behalf of Funvest was that Funvest had paid the

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93 PWS 3430 and 3968 at para 28.

94 PWS 3430 and 3968 at paras 29(a), (c).

95 PWS 3430 and 3968 at para 29(e); PWS 2058 at paras 30–31.

96 PWS 3430 and 3968 at para 31.

KRW13bn it received from ESA to the selling parties, including PVS, pursuant to the arrangements made under the Alleged Consolidation. In Mr Lee Jong Eun's own words:[97] "[T]wo of three tranches of purchase consideration from ESA (amounting to KRW13bn) were already received and paid out by Funvest to the selling parties". However, in his 4th Affidavit dated 19 August 2020, he sought to clarify that the payment out of the purchase consideration was through the issuance of promissory notes.[98] Instead, Funvest had used the funds received "for investments, to repay loans, as well as to pay operational expenses."[99] The Plaintiff also referred to an affirmation given by Mr Lee Jong Eun in the Hong Kong Proceedings on 9 October 2020, in which Mr Lee appeared to change his position again. He stated there that the consideration received from ESA was in the form of promissory notes, contradicting his earlier positions that Funvest had received KRW13bn in cash.[100]

(c) The Plaintiff argued that the promissory notes could not be treated as authentic. Funvest had maintained that it received the sum of KRW13bn in cash and had paid out the same to sellers including PVS. It was only after the *ex parte* orders were obtained against PVS that Funvest then claimed that the sum received was used for various investments, loans and operational expenses. Funvest itself was a company with minimal assets and was used as a consolidation vehicle.

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97 Lee Jong Eun's 1st Affidavit dated 16 July 2020 at para 5.3.1(a).

98 Lee Jong Eun's 4th Affidavit (filed under cover of Yeow Ying Xin Madeline's Affidavit dated 19 August 2020) at para 2.1.2.

99 Lee Jong Eun's 4th Affidavit at para 2.1.3.

100 PWS 3430 and 3968 at para 34.

The promissory notes were also unsecured. It was difficult to accept that the promissory notes were actually intended to be and relied upon as authentic payment documents.[101] The terms of the promissory notes also appeared to mean that Funvest would make a loss on the sale of shares to ESA.[102]

(d) The Alleged Consolidation also did not make sense as it added to the cost of the acquisition of the shares as it incurred additional stamp duties due to the number of transfers.[103]

78 I do not give as much weight to these points as the Plaintiff submitted I should. While the Plaintiff argued that ESA and Funvest appeared reluctant to complete the transaction, the Plaintiff also submitted that ESA was facing significant financial difficulties.[104] I find these two submissions inconsistent. The existence of financial difficulties on ESA's part would be a legitimate reason for the transaction being delayed.

79 Further, I acknowledge that the Plaintiff has raised certain points as to the Alleged Consolidation and sale to ESA that do call for explanations from the relevant defendants. However, I do not ultimately find that a good arguable case of conspiracy has been made out at this stage. Despite the different positions taken as to the existence or transfer of KRW13bn pursuant to the SPA, and Funvest's inconsistent positions on whether this sum was received and if so, what was done with that sum, I do not find that these uncertainties are

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101 PWS 3430 and 3968 at para 32.

102 PWS 3430 and 3968 at para 32(e).

103 PWS 2058 at para 183.

104 Transcript 28 October 2020 at p 45, ln 14–17.

sufficiently directed to the existence of a conspiracy. While these facts, if accepted, do give rise to doubts about Funvest's honesty and credibility, I do not find that there are any concrete links between these inconsistencies and the conspiracy itself. A mere suspicion of conspiracy arising from general dishonesty or lack of credibility, in my view, is not sufficient to make out a good arguable case.

80 In addition, while the Plaintiff has sought to argue that ESA was acting together with Mr Spackman and SMG(HK),[105] this is only supported by conjecture. There is no credible evidence to suggest that ESA was somehow involved with Mr Spackman in these transfers. Whilst it is possible that the remaining entities were the only ones actively engaged in a conspiracy, and that ESA was an innocent party being used as a convenient means of carrying out or justifying the conspiracy, this is entirely speculative.

81 Indeed, while there may be doubts (as regulators had expressed) about the transfers from the BVI Companies and the transfers to ESA, I do not find that the Plaintiff has sufficiently shown why the inference to be drawn from those facts is a conspiracy to injure the Plaintiff. It is equally possible that the transfers were simply some other business dealings, however potentially disreputable. That, in my view, is the crux of the difficulty that the Plaintiff faced. While it is true that conspiracies are often only provable by inferences, the inferences must be targeted and justified, and not just one of many possibilities. The latter is speculative, and not at all the basis of a good arguable case.

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105 PWS 2058 at para 13(c).

82 The fact is that shares from sellers other than the BVI Companies were involved in the Alleged Consolidation and sale to ESA as well.[106] Indeed, on the present evidence, the Plaintiff has not shown links between those other sellers and Mr Spackman. Yet, *all* of the transfers for the Alleged Consolidation were at undervalue, rendering that fact equivocal in the circumstances. Given that it has not been shown that ESA was also acting in cahoots with the defendants, the transactions did have the appearance of a commercial transaction with independent parties involved. The mere fact that Mr Spackman may have evaded paying his judgment debts does not mean that every commercial transaction that he (or any entity with tangential relationship with him) enters into is part of that process of evasion. In addition, the incurring of additional stamp duties which the Plaintiff emphasised may well have been necessitated by the preference that some of the sellers had for dealing with a Singapore-incorporated company, requiring the involvement of Funvest. While there were elements of the defendants' explanations that gave rise to difficulties, I do not think that an allegation of conspiracy can be made out on those difficulties alone.

The Enforcement Claim and loss for the purposes of the Conspiracy Claims

83 For completeness, I turn then to PVS's argument that because the underlying Enforcement Claim could not succeed due to the limitation period expiring under s 6(1)(*a*) of the Limitation Act (Cap 163, 1996 Rev Ed), no loss was actually caused to the Plaintiff if he could not enforce the Judgments in

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106 Transcript 28 October 2020 at p 80, ln 11–21.

Singapore, and a crucial element of the Conspiracy Claims would not be satisfied.[107]

84 The Plaintiff's primary response was essentially that the quality of the Judgments and the Enforcement Claim was independent of the Conspiracy Claims.[108] While I accept that, as a matter of pleadings, the Plaintiff did not make the Conspiracy Claims contingent on the Enforcement Claim,[109] I see the force in PVS's argument that if the Judgments could not be enforced in Singapore, then no *loss* will have been caused, since it is not otherwise suggested that the dealings with the SMG(HK) shares were such as to prevent enforcement in Korea or New York, or in any other jurisdiction. This is a separate question from whether the tortious claim is a form of primary liability in and of itself and not secondary to the enforcement of the Judgments, which I accept: see *JSC BTA Bank v Ablyazov and another (No 14)* [2020] AC 727 ("*JSC*") at [9].

85 The Plaintiff's other argument on limitation, then, is its reliance on s 29 of the Limitation Act.[110] Section 29(1) of the Limitation Act reads:

> **29.**—(1) Where, in the case of any action for which a period of limitation is prescribed by this Act —
>
> > (*a*) the action is based on the fraud of the defendant or his agent or of any person through whom he claims or his agent;
> >
> > (*b*) the right of action is concealed by the fraud of any such person as aforesaid; or

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107 Transcript 5 November 2020 at p 14, ln 2–16.

108 Transcript 5 November 2020 at p 110, ln 25–29; PWS 3430 and 3968 at para 51.

109 Transcript 4 November 2020 at p 45, ln 18–19.

110 Transcript 4 November 2020 at p 50, ln 31 to p 51, ln 4; Reply (Amendment No 3) at para 19(c).

> (*c*) the action is for relief from the consequences of a mistake,
>
> the period of limitation shall not begin to run until the plaintiff has discovered the fraud or the mistake, as the case may be, or could with reasonable diligence have discovered it.

86 The Plaintiff argued that due to Mr Spackman's fraud, concealment and/or dissipation of assets, he was only able to discover Mr Spackman's assets in Singapore on or about 1 October 2018.[111] I find that there is a good arguable case that s 29 of the Limitation Act would apply. Indeed, apart from raising the issue of limitation and noting the high threshold for s 29 of the Limitation Act, Funvest did not appear to seriously contend that there was no good arguable case that s 29 would apply.[112]

87 As for the other contentions that the Enforcement Claim would fail, I find that there is a good arguable case that the Korean Judgments would be enforced in Singapore. I accept that foreign default judgments that are final and conclusive can be enforced in Singapore, as the High Court held in *Eleven Gessellschaft Zur Entwicklung Und Vermaktung Von Netzwerktechonologien MBH v Boxsentry Pte Ltd* [2014] SGHC 210 at [79] (see also *Humpuss Sea Transport Pte Ltd (in compulsory liquidation) v PT Humpuss Intermoda Transportasi TBK and another* [2016] 5 SLR 1322 at [77]). The Korean Judgments are clearly final and conclusive, and no further recourse can be had against them in the Korean courts. Hence, I find that a good arguable case for enforcement has been made out. Once again, I state for the avoidance of doubt that the merits of the Enforcement Claim is a matter for the trial judge to determine after trial.

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111 SOC at para 24.

112 Transcript 5 November 2020 at p 9, ln 1–6.

The initial ownership of the SMG(HK) shares

88 PVS also raised an argument that no intention to cause injury (predominant or otherwise) can be shown because the Plaintiff has not proven that the SMG(HK) shares belonged to Mr Spackman. As such, they argued, the dealings in the SMG(HK) shares could not be said to be intended to frustrate any enforcement of judgment debts (which are personal) against Mr Spackman.[113] The Plaintiff naturally argued that the shares can be traced back to Mr Spackman.

89 I find that the Plaintiff can show a good arguable case that the shares were initially owned by Mr Spackman through GD Enterprise, either directly or indirectly. It is not disputed that the SMG(HK) shares in question were all held by GD Enterprise prior to the series of transfers that form the basis of the present dispute. The connection between Mr Spackman and GD Enterprise alleged by the Plaintiff is based on Triolink, which was apparently acting as the entity which gave instructions to GD Enterprise's registered agent.[114] When the Plaintiff's Hong Kong solicitors visited the premises of Triolink, the solicitors were apparently told by an employee of Triolink that *Mr Spackman was the owner of GD Enterprise*.[115] For completeness, I observe that as these are interlocutory proceedings, affidavits may contain hearsay evidence if the sources and grounds of the information or belief is stated (see O 41 r 5(2) of the ROC), which requirement is satisfied here. The question of whether this link can be proved *at trial* is a different one. Furthermore, while Mr Kim is stated to be the director and owner of GD Enterprise, I find that Mr Kim's relationship

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113 PVS Subs at paras 98–107.

114 Plaintiff's 7th Affidavit at para 41.

115 Plaintiff's 7th Affidavit at paras 42-43.

with Mr Spackman casts some doubt on his independence as a matter of reality, given the other evidence above. In the circumstances, I find that there is a good arguable case that the SMG(HK) shares were Mr Spackman's assets through GD Enterprise.

Has the Plaintiff shown a good arguable case and/or a serious issue to be tried?

90 In my judgment, the Plaintiff has not shown a good arguable case that PVS and Funvest were involved in a conspiracy as alleged. A number of parties *other than PVS and the BVI Companies* participated in the commercial transaction in which the shares were to be consolidated and sold on to ESA. There does not appear to me to be concrete evidence of a relationship between Mr Spackman and the BVI Companies on the one hand, and PVS and Funvest on the other. The timing of the transfers also did not provide strong support for the Plaintiff's contentions. In addition, there is no reason, in my view, to suggest that ESA was involved in any conspiracy, and if that is the case, it would also be difficult to suggest that the other entities were simply using the sale of shares to ESA as a convenient means of conducting their conspiracy.

91 For completeness, I also discuss the issue of intention. In order for the Plaintiff to rely on lawful means conspiracy, he has to show that there is a good arguable case that the *predominant intention* of PVS and Funvest was to injure him. Here, the Plaintiff faces an obstacle. The authority that the Plaintiff relied upon substantially in this case went against his argument on the predominant intention. In *JSC*, the claimant bank had brought an action for conspiracy against the defendants, alleging that the defendants were hiding Mr Ablyazov's assets. As the UK Supreme Court noted at [16]:

> The bank does not of course contend that the defendants' predominant purpose in hiding Mr Ablyazov's assets was to

> injure it. Their predominant purpose was clearly to further Mr Ablyazov's financial interests as they conceived them to be.

The same logic applies here. PVS and Funvest were not predominantly intending to injure the Plaintiff so much as to serve Mr Spackman's interests (assuming that the allegations are true). That would not suffice for the tort of lawful means conspiracy, and I therefore find that no good arguable case can be made on that ground.

92 On the facts, I do not find that next part of the UK Supreme Court's reasoning at [16] of *JSC* applies in this case:

> At the same time, damage to the bank was not just incidental to what they conspired to do. It was necessarily intended. The freezing order and the receivership order had been made on the application of the bank for the purpose of protecting its right of recovery in the event of the claims succeeding. The object of the conspiracy and the overt acts done pursuant to it was to prevent the bank from enforcing its judgments against Mr Ablyazov, and the benefit to him was exactly concomitant with the detriment to the bank as both defendants must have appreciated. In principle, therefore, we conclude the cause of action in conspiracy to injure the bank by unlawful means is made out.

In that case, the transfers were arguably in contempt of court, and the Supreme Court held that these constituted unlawful means: *JSC* at [16] and [24].

93 I am unable to find an agreement between PVS and Funvest, and the other defendants to cause injury to the Plaintiff. Given the absence of concrete evidence showing a link between PVS/Funvest and the other defendants, it is not clear to me that PVS and Funvest could be said to have the same intention in dealing with the SMG(HK) shares. I also do not find that there is a good arguable case that PVS and Funvest agreed to using *unlawful means*

specifically. The Plaintiff relies on the following three unlawful means to cause injury, as pleaded:[116]

> (a) to defraud the Plaintiff and/or to conceal/dissipate/dispose of [Mr Spackman's] Assets in order to make [Mr Spackman] judgment-proof and prevent payment of the judgment debts due to the Plaintiff under the Seoul High Court Judgment, Korean Supreme Court Judgment and/or the New York Judgment;
>
> (b) to dissipate/dispose of [Mr Spackman's] Assets in breach of freezing injunctions which the Plaintiff obtained; and/or
>
> (c) [Mr Kim] breached his fiduciary duties owed to the BVI Companies.

94 The first alleged unlawful means does not satisfy the requirements for unlawful means. There is no description of *why* the concealment, dissipation or disposal of assets was unlawful. That first ground is a description, rather, of the conspiracy, and the question must be why those transfers were unlawful. As for the second alleged unlawful means, the existing BVI Injunctions were targeted only at the BVI Companies. Given my views above, I am unable to conclude that PVS and Funvest either knew of the BVI Injunctions or intended to breach the BVI Injunctions and to use that as the instrumentality by which the Plaintiff was to be injured. As for the third ground, it is not entirely clear to me how these breaches of director's duties could be established if it is true that the companies were used simply to effect the transfers in line with the conspiracy, and in any event, given my findings above, I also do not think a good arguable case can be made that PVS and Funvest intended that the transfers in breach of directors' duties would be used to injure the Plaintiff.

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116 SOC at para 27.

95 In my view, for the same reasons, no serious issue has been raised to be tried in this case. I do recognise that this is a lower standard than the requirement that there be a good arguable case which applies to *Mareva* injunctions, but I find that the Plaintiff's case, being largely speculative as against PVS and Funvest, does not give rise to a serious issue to be tried.

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96 Having considered the factual background, I turn for completeness to the other requirements for the interim injunction and the *Mareva* injunction, in relation to Funvest.

The interim injunction

97 I am of the view that an interim injunction under either O 29 r 1 or O 29 r 2 of the ROC is not appropriate in these circumstances. The fundamental problem that the Plaintiff faces is that these injunctions are not intended to provide the kind of relief that the Plaintiff actually seeks against Funvest. I deal with each of these in turn.

98 In relation to O 29 r 1 of the ROC, the authorities are clear that an injunction attaching to certain properties or assets, or the traceable proceeds thereof, is rightly considered a proprietary injunction. I accept that not all injunctions under O 29 r 1 are proprietary in nature, and that certain injunctions do enjoin a party from *acting* in a certain manner. However, from the way that Draft Order A in SUM 2058/2020 has been framed, it is clear to me in substance that the injunction would prevent dealings with particular assets or traceable proceeds thereof, and that would amount to a proprietary injunction. I set the wording of Draft Order A in SUM 2058/2020 out, as relevant:

> 1. [Funvest] be restrained, whether by itself, its directors, officers, employees and/or agents, from:
>
> a. selling and/or transferring the 6,353,968 shares in [SMG(HK)] currently in Funvest's possession to any other party;
>
> b. moving out of Singapore, or disposing of, or dealing with, or diminishing, in any way, the sum of KRW12,707,936,000 (being the sale proceeds of the said 6,353,968 [SMG(HK)] shares at KRW2,000 per share ("**Sale Proceeds**")) in the event all or part of the 6,353,968 [SMG(HK)] shares have been sold/transferred;
>
> c. causing the Sale Proceeds or any part thereof to be transferred by [ESA] (or any party nominated by it or acting on its behalf) directly to any third party.
>
> …

99 As the Court of Appeal held in *Bouvier* at [144]:

> An interlocutory proprietary injunction … is granted in support of a claim for proprietary relief. It is a prohibitory injunction that fastens on the specific asset in which the plaintiff asserts a proprietary interest. It prevents the defendant, pending the resolution of the dispute, from dealing with that asset and its traceable proceeds. …

Indeed, in *Bouvier*, the plaintiffs were seeking the proprietary injunctions to support only one part of their claims – they were relying on *equitable proprietary interests* on the basis of a constructive trust imposed on secret profits, but did not seek to rely on their other *personal* claims of breach of fiduciary duties, knowing assistance or knowing receipt to justify the proprietary injunction (*Bouvier* at [145]).

100 This distinction was helpfully summarised by the High Court in *Sia Chin Sun v Yong Wai Poh (Sia Tze Ming, non-party)* [2019] 3 SLR 1168 at [48]:

> As explained by the Court of Appeal in *Bouvier, Yves Charles Edgar v Accent Delight International Ltd* [2015] 5 SLR 558 ('*Bouvier*') at [144], a proprietary injunction is a relief that

> 'fastens on the specific asset' in which ***the plaintiff asserts a proprietary interest***, and prevents the defendant from ***dealing with that asset and its traceable proceeds***. The applicable test would be that set out in *American Cyanamid Co v Ethicon Ltd* [1975] AC 396 ('*American Cyanamid*'). In contrast, as set out in *Bouvier* at [143], a Mareva injunction is granted in support of a claim for ***personal relief***, which does not latch on to any specific asset of the defendant, but prevents the defendant from disposing of his assets beyond a certain value to defeat a possible judgment that may be rendered against him. [emphasis added in bold italics]

101 The claim against Funvest is not a proprietary claim on the basis of any interest in the shares or the proceeds thereof. There is therefore no basis for such an interim injunction as that sought in Draft Order A to SUM 2058/2020 to be ordered against Funvest. Put another way, the substantive claim against Funvest would not, even if successful, entitle the Plaintiff to relief in respect of the shares and/or the traceable proceeds thereof specifically. Instead, it would entitle them to damages that can be assessed. Given the nature of the claim, which is *personal* and sounding in damages, it cannot be right to grant the Plaintiff a *proprietary* injunction at this stage in the proceedings. The only alternative to this analysis would be to treat the injunction as a *quia timet* injunction, but this was not advanced by the Plaintiff (and would be inconsistent with his claim that the tort had already been committed) and I say no more about this possibility.

102 I turn then to O 29 r 2 of the ROC. As this issue turns on the interpretation of O 29 r 2, I set out the relevant provisions again:

> **Detention, preservation, etc., of subject-matter of cause or matter (O. 29, r. 2)**
>
> **2.**—(1) On the application of any party to a cause or matter, the Court may make an order for the detention, custody or preservation of any property which is the subject-matter of the cause or matter, or as to which any question may arise therein, or for the inspection of any such property in the possession of a party to the cause or matter.

> (2) For the purpose of enabling any order under paragraph (1) to be carried out, the Court may by the order authorise any person to enter upon any immovable property in the possession of any party to the cause or matter.
>
> (3) Where the right of any party to a specific fund is in dispute in a cause or matter, the Court may, on the application of a party to the cause or matter, order the fund to be paid into Court or otherwise secured.
>
> (4) An order under this Rule may be made on such terms, if any, as the Court thinks just.
>
> …

103 Order 29 r 2(1) of the ROC, on a plain reading of the rule, comprises two different categories of orders:

(a) An order for the detention, custody or preservation of property,

(i) which is the subject-matter of the cause or matter; or

(ii) as to which any question may arise therein; or

(b) An order for the inspection of any *such* property in the possession of a party to the cause or matter.

104 Based on the draft order attached to SUM 2058/2020, if one were to put the Plaintiff's application in the language of O 29 r 2(1) of the ROC, the Plaintiff is seeking an order for the detention, custody or preservation of the property in question, *ie*, the shares in SMG(HK) and/or the sales proceeds thereof. To support this application of O 29 r 2 to the present case, the Plaintiff argued that O 29 r 2 had a wider application than simply cases of proprietary interests over the property in question, and that it extended to any property as to which a question may be raised. This included the shares and/or sales proceeds in the present case as the Conspiracy Claims involved those properties. To

support this proposition, the Plaintiff cited a number of cases where O 29 r 2 or its equivalent was employed even where there was no proprietary claim.

105 In my judgment, the Plaintiff cannot rely on O 29 r 2(1) of the ROC for the injunction it seeks in the present case. I deal with the application in two parts, as it relates to the shares and as it relates to the sales proceeds thereof. Insofar as the application relates to the sales proceeds, it is clear that O 29 r 2(1) has no application – it has been held that "property" under O 29 r 2(1) of the ROC does not include *choses in action* (see *Bocotra Construction Pte Ltd and others v Attorney-General* [1995] 2 SLR(R) 282 at [50]–[51] and *UCMI Ltd v Tokio Marine & Fire Insurance Co (Singapore) Pte Ltd and others* [2006] 4 SLR(R) 95 at [27]–[28]), and it is trite that a right to monies in a bank account is a *chose in action* (see *Lipkin Gorman v Karpnale Ltd* [1991] 2 AC 548 at 574; *Wee Chiaw Sek Anna v Ng Li-Ann Genevieve (sole executrix of the estate of Ng Hock Seng, deceased) and another* [2013] 3 SLR 801 at [113]). There is no suggestion that the sales proceeds referred to in this case were or are held in any other manner than as monies in a bank account. Therefore, no order can be made under O 29 r 2(1) of the ROC in respect of the sale proceeds. If the application pertains to a specific fund, the appropriate provision is under O 29 r 2(3) of the ROC, but the Plaintiff has not characterised his application as being under that provision[117] and has not addressed the applicability of that rule. There is also a doubt, as Funvest argued, as to whether the sale proceeds in question have been intermingled. Given how the Plaintiff's case was run, I do not deal with O 29 r 2(3) any further.

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117 See Transcript 28 October 2020 at p 50, ln 18–26.

106 I turn then to the application as it relates to the shares. I proceed on the assumption (without coming to a conclusion) that shares may be treated as "property" under O 29 r 2(1) of the ROC. Even if I accepted that part of the Plaintiff's contention, it seems clear to me that this was not a case where an order under O 29 r 2(1) of the ROC can be made in respect of the shares. First, I do not find that the shares in this case are the subject-matter of the claim or matter. The tortious claims against the relevant defendants in unlawful or lawful means conspiracy are focused on the agreement and actions of the defendants. That the alleged conspiracy centred around these shares in SMG(HK) does not render these shares the subject-matter of the claim or matter – apart from their provenance and alleged relationship to Mr Spackman (which are separate facts as to the history of the transactions and not one concerning the shares *themselves*), there is nothing specific to the shares which connects the shares to the tortious claim. I state here for avoidance of doubt that this is an exercise that needs to be undertaken on the facts of each case and I do not base my reasoning here only on the fact that the tortious claim is not a proprietary one.

107 Second, the Plaintiff has not adequately shown how there may be a question arising in the claim or matter in relation to the shares themselves. The Plaintiff has not alleged before me that he requires the shares themselves for the purposes of establishing the Conspiracy Claims, or that some question arises in relation to the shares specifically as opposed to questions arising generally *surrounding* the shares and the transactions related to the shares. Put another way, it is not clear why the shares themselves would be needed as part of the suit. There is a need to "establish a sufficiently real connection between the issues in action and the property that is the subject of the application": *UCMI* at

[34]. The Plaintiff has not established this connection in his application before me and mere assertions to that effect are certainly not enough.[118]

108 The authorities cited by the Plaintiff do not, in the final analysis, assist the Plaintiff. I deal with each of them in turn.

(a) *Revenue and Customs Commissioners and another v Ben Nevis (Holdings) Ltd and others* [2012] EWHC 1807 (Ch) ("*Ben Nevis*") concerned a claim under s 423 of the UK's Insolvency Act 1986 for a fund of £7.8m which had been transferred by the first defendant to the second defendant's bank account after the first defendant was investigated for tax evasion. The claim sought to make the fund available for partial satisfaction of a tax recovery claim. The English High Court allowed the claim under the Insolvency Act. In my view, I am unable to see how that authority is relevant here. The proposition relied upon by the Plaintiff at [71] of *Ben Nevis* was made *specifically* in relation to the relief under the Insolvency Act (UK) and does not stand for a general proposition that an injunction can be granted over specific assets in the general course of things in the absence of a proprietary claim. In any event, in that situation, it would seem that the monies may be considered a specific fund over which there is a dispute under O 29 r 2(3) of the ROC.

(b) In *Unilever plc v Pearce* [1985] FSR 475 ("*Unilever*"), the English Patent Court granted an order allowing inspection of machinery in a claim for infringement of a patent, on the basis that it was property as to which a question may arise under O 29 r 2(1) of the UK Rules of

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118 Plaintiff's 7th Affidavit at paras 124, 131, 139.

the Supreme Court as was in force at the time, and was *in pari materia* with O 29 r 2(1) of the ROC. However, that case is clearly different. Although the claim was not a proprietary one, the very property and the specific characteristics of the property, in that case, machinery allegedly used in the offending manufacturing process, were exactly the issues in the claim. That was in the very nature of a patent infringement claim, since the allegation was that the use of that machinery in the alleged manner was the source of at least part of the infringement: *Unilever* at 485. Hence, the court could conclude that the machinery in question would be "machinery or equipment (*ie,* a physical 'property') as to which a question or questions may, and, indeed, almost certainly will arise in the action": at 485. The same cannot be said of the shares in the present case, where nothing appears to turn on the specific characteristics of the shares themselves (as opposed to facts surrounding the shares which are dealt with by other sources of evidence).

(c) Similarly, in *Towa Corporation v ASM Technology Singapore Pte Ltd and another* [2014] SGHCR 16, the claim was an infringement of a patent. The application concerned, *inter alia*, inspection of the machine by which the infringement was allegedly occasioned: at [1]. Again, that is a case where a question or questions may arise as to the property, given the centrality of specific characteristics of the property to the claim. Ultimately, the application did not succeed in that case because the High Court found that the plaintiff had failed to establish a genuine and substantial issue to be tried: at [47].

109 The Plaintiff's reference to *Anton Piller* orders (what is now known as a "search order") is also, in my view, misplaced. First, as a matter of clarification, O 29 r 2 is not seen as the *basis* of the *Anton Piller* jurisdiction.

Rather, as the learned authors describe it in the *White Book* at para 29/3/2, the *Anton Piller* jurisdiction "complements" the rules in O 29 rr 2 and 3. Second, the purpose of a search order is to prevent a defendant from frustrating the process of justice and to preserve the subject-matter of a claim as well as documents that may relate to the cause of action (*White Book* at para 29/1/6). That purpose does not apply to the shares or the sales proceeds in this case and whatever may be said about the scope of a search order does not translate to the present context. In any event, a similar inquiry has to be undertaken as to the connection of the property in question to the cause of action when a search order is considered, and for the same reasons above, I do not think the requirement would be satisfied in relation to the shares and/or sale proceeds thereof.

110 For these reasons, I am unable to grant the orders for an interim injunction under either O 29 r 1 or r 2 of the ROC as sought by the Plaintiff against Funvest. Given my views on the inapplicability of O 29 rr 1 and 2 in the present case, I do not go on to discuss the requirements for the court's exercise of discretion in granting such an injunction.

Mareva injunction

111 Apart from the requirement of a good arguable case, the other criterion for the granting of a *Mareva* injunction which Funvest disputes is the requirement of a real risk of dissipation of assets. Given how the arguments have been run in this case, the following warning from the Court of Appeal in *Bouvier* at [93] and [94] bears repeating:

> 93 … In our judgment, if there is a unifying principle that can adequately rationalise and explain the circumstances in which a court may legitimately infer a real risk of dissipation from nothing more than a good arguable case of dishonesty, it is this – ***the alleged dishonesty must be of such a nature that it has a real and material bearing on the risk of***

> ***dissipation***. It will be evident from our analysis of the cases that it is in such circumstances that the courts have been willing to draw the necessary inference. This is sensible because whether or not such an inference may be drawn is ultimately a question of fact. In assessing whether the inference is warranted as a matter of fact, it is appropriate, in our judgment, for the court to *segregate* the two questions (*ie*, whether there is a good arguable case on the merits of the plaintiff's claim and whether it has been shown that there is a real risk of dissipation) and answer them *separately*. We accept that the evidence relied on to answer the first question may be the same as that relied on to answer the second. But, once the inquiries are segregated, it will be clear that whether the evidence pertinent to the first stage of the inquiry is sufficient also for the purposes of the second stage is an assessment that cannot – and emphatically must not – be made mechanistically; and in that context, if an allegation of dishonesty is all that is relied on, that allegation must be such as to say enough about a real risk of dissipation in the circumstances.
>
> 94 In our judgment, a well-substantiated allegation that a defendant has acted dishonestly can and often *will*, as we have said, be relevant to whether there is a real risk that the defendant may dissipate his assets. But, we reiterate that in each case, ***it is incumbent on the court to examine the precise nature of the dishonesty that is alleged and the strength of the evidence relied on in support of the allegation***, keeping fully in mind that the proceedings are only at an interlocutory stage and assessing, in that light, whether there is sufficient basis to find a real risk of dissipation. That alone is the justification which lies at the heart of the court's jurisdiction to grant Mareva injunctions. ***An allegation of dishonesty does not in itself form a substitute for an examination of the degree of risk of dissipation unless, as we have said, that allegation is of a nature or characteristic that sufficiently bears upon the risk of dissipation***. …
>
> [emphasis in original in italics; emphasis added in bold italics]

112 I acknowledge the Plaintiff's argument that in this case, the allegations of dishonesty are not general and go towards the risk of dissipation. This is because the very nature of the conspiracy was a conspiracy to dissipate assets for Mr Spackman, suggesting that there would be a similar risk in relation to the conspirators' own assets. Indeed, the Court of Appeal in *Bouvier* was not rejecting the relevance of dishonesty to the question of a real risk of dissipation,

but was clarifying only that the allegation had to "sufficiently bear[] upon the risk of dissipation".

113 However, given my views on the factual basis of the Plaintiff's argument, I find that any dishonesty in this case (which gives rise to some of the doubts as to specific transfers and the ESA arrangement) is only a generalised dishonesty that does not have a direct bearing on the risk of dissipation. Further, the specific arguments raised by the Plaintiff[119] in this regard are all *premised* (and understandably so) on the basis that he had successfully established a good arguable case on the Conspiracy Claims. As it is not necessary for my determination, I do not go on to consider the other factors which the Plaintiff argues shows a real risk of dissipation.[120]

Disclosure orders

114 The Plaintiff's case on the disclosure orders is contingent on there being an injunction ordered against Funvest.[121] As such, I do not deal with this any further. Any specific discovery or interrogatories that the Plaintiff would wish to seek from Funvest should be done in an appropriate application given that Funvest is now a party to these proceedings.

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119 PWS 2058 at paras 223–229.

120 Transcript 4 November 2020 at pp 52 at ln 21–54 at ln 19.

121 Transcript 5 November 2020 at p 130, ln 5–9.

SUM 3040/2020 and SUM 3968/2020

The interim injunctions

115 For the reasons already expressed above at [97]–[110], I also find that there is no basis for granting interim injunctions against PVS. The same considerations above apply since the tortious claim against PVS is in similar terms as the claim against Funvest, and the shares and/or sale proceeds play a similar role in these proceedings.

Mareva injunctions

116 The Plaintiff's primary argument here is that it follows from the Plaintiff's establishing of a good arguable case in the Conspiracy Claims that there is a real risk of dissipation.[122] As I do not find that a good arguable case has been made out, the Plaintiff's case on this element of dissipation is also not satisfied. I therefore decline to grant the *Mareva* injunction sought for against PVS.

117 It also follows, given how the proceedings have turned out, that I discharge the *ex parte Mareva* injunction ordered in ORC 4421/2020 and ORC 4424/2020. I also grant PVS liberty to apply for further orders for an inquiry to be made as to the amount, if any, of damages which they have sustained by reason of the orders, and that such damages be paid by the Plaintiff to PVS. I note that PVS would have to address the question of why an inquiry should be ordered in that application. As such, I make no findings on that in this judgment.

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122 PWS 2058 at para; Transcript 4 November 2020 at p 54, ln 17-19.

Disclosure orders

118 For the same reasons as stated at [114] above, I do not make the disclosure orders sought by the Plaintiff.

Conclusion

119 For the above reasons, I find that there is no basis for either interim injunctions in the manner sought by the Plaintiff or *Mareva* injunctions against Funvest or PVS. I also conclude that the *ex parte Mareva* injunctions against PVS should be discharged. Given my views, I do not go on to deal with whether any distinction ought to be drawn between the merits of the enforcement of the Korean Judgments as opposed to the enforcement of the New York Judgment in the Enforcement Claim.

120 I will hear counsel on the appropriate orders to be made, costs, and any consequential applications. Parties are to provide to the Registry within three days of this judgment a common date for a half-day hearing in the week commencing 1 March 2021 for this hearing. Written submissions, limited to 10 pages (excluding exhibits, documents and case authorities) are to be filed and served three days before the hearing.

Tan Puay Boon
Judicial Commissioner

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Joseph Tay Weiwen, Zhang Yiting, Lee I-Lin and Sheryl Tan (Shook Lin & Bok LLP) for the fifth defendant;
Lok Vi Ming SC, Jonathan Muk, Marie Ravindran, Aditi Ravi and Madeline Chan (LVM Law Chambers LLC) for the seventh to ninth defendants.
