## DCPI 569/2015

[2018] HKDC 1267

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

PERSONAL INJURIES ACTION NO 569 OF 2015

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##### BETWEEN

ERWIANA SULISTYANINGSIH Plaintiff

and

LAW WAN TUNG Defendant

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Before: His Honour Judge MK Liu in Chambers (Open to public)

Date of Hearing: 19 October 2018

Date of Decision: 19 October 2018

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DECISION

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*Introduction*

1. By a summons taken out on 24 August 2018 (“the summons”), the plaintiff seeks an order to continue the post-judgment Mareva injunction obtained on 23 August 2018 (“the injunction”) until a further order made by this court. By the injunction, the defendant is restrained from removing any of her assets within Hong Kong up to the value of HK$1,000,000.00, and the defendant is required to disclose all her assets of an individual value of HK$10,000.00 or more in Hong Kong.
2. Having read the evidence on service adduced by the plaintiff, I am satisfied that the documents in relation to this application have been duly served on the defendant in the manner prescribed in my order made on 31 August 2018 for substituted service.

*Background*

1. I would first set out the background facts.
2. The plaintiff was previously employed by the defendant as a foreign domestic helper in Hong Kong between the period of 30 May 2013 and 9 January 2014, during the course of which she was falsely imprisoned and repeatedly tortured and abused by the defendant.
3. The incident was reported to the police and the defendant was charged and convicted (under criminal action nos DCCC 421 & 651 of 2014, consolidated) of various charges, including inflicting grievous bodily harm, assault occasioning actual bodily harm, causing grievous bodily harm with intent, common assault and criminal intimidation. As a result of these convictions, the defendant was sentenced to 6 years’ imprisonment.
4. The plaintiff commenced the proceedings herein against the defendant to claim damages for her injuries suffered. On 28 April 2015, interlocutory judgment on liability was entered against the defendant. The hearing for assessment of damages took place on 4 December 2017. On 21 December 2017, this court handed down a judgment in which the court awarded the plaintiff damages in the sum of HK$809,430.03, together with interest and costs. Those costs have not yet been taxed.
5. Subsequently, the defendant applied for leave to appeal and stay of execution pending appeal. The application was dismissed on 11 May 2018, with costs to the plaintiff summarily assessed at HK$71,000.00.
6. After the said interlocutory judgment was entered but before the assessment of damages, the plaintiff discovered that the defendant had, on 17 July 2015, assigned to her husband her half share in their residential property (which was then held by the defendant and her husband as joint tenants) at Flat J, 38/F, Block 5, Beverly Garden, 1 Tong Ming Street, Tseung Kwan O, Sai Kung, New Territories (“the Residential Property”).
7. On 25 September 2015, the plaintiff issued proceedings in the Court of First Instance against the defendant and her husband (HCA 2256/2015, “the HC action”) pursuant to section 60(1) of the Conveyancing and Property Ordinance to set aside the aforesaid assignment on the ground that the purpose of which is to defraud creditors of the defendant.
8. During the course of the HC action, it was revealed that the defendant maintained an account with HSBC (“the HSBC account”) and an account with Standard Chartered Bank (“the SCB account”).
9. In the HC action, the final judgment and the decision on costs were handed down on 28 December 2017 and 2 March 2018 respectively. It was adjudicated that the said assignment constituted a disposition of property by the defendant and her husband with the actual intention of defrauding the plaintiff in the sense of defeating her claim and that intention was shared by both the defendant and her husband. The assignment was thereby set aside and it was ordered that the defendant and her husband should be jointly and severally liable for the plaintiff’s costs in the HC action.
10. On 26 June 2018, the plaintiff conducted an updated land search against the Residential Property and found out the following:-
11. On 13 November 2017, the husband, acting in person, commenced HCA 2596/2017 against the defendant for an alleged loan of HK$3,055,712.00.
12. The husband abbreviated the parties’ names on the writ in HCA 2596/2017, putting down “YB Tsui” as the plaintiff and “WT Law” as the defendant. Further, while the husband was acting in person, he put down the address of a law firm on the backsheet as his corresponding address.
13. On 20 December 2017, the husband obtained a default judgment in HCA 2596/2017.
14. On 1 February 2018, the defendant’s husband obtained a charging order nisi on the strength of the default judgment. On 4 April 2018, the charging order nisi was made absolute. On 19 April 2018, the charging order was registered against the Residential Property in the Land Registry.
15. The defendant has never mentioned the claim made by her husband during the trial of the HC action on 23 November 2017 and the hearing for assessment of damages in this case on 4 December 2017.
16. The plaintiff also discovered that a third party money lender (GS Credit Limited) had registered a legal charge dated 14 March 2018 against the defendant’s half share in the Residential Property as security for a loan of HK$3,000,000.00 (“the HK$3 million loan”). The plaintiff has not been able to ascertain the whereabouts of the HK$3 million loan.
17. A report was made to the Director of Legal Aid soon after discovering the above. Subsequently, the Director of Legal Aid granted the necessary approval enabling the plaintiff to make an application for a Mareva injunction. On 23 August 2018, the plaintiff applied for and obtained the injunction.

*The principles*

1. There can be a post-judgment injunction in aid of execution where there are grounds for believing that the judgment debtor intends to dispose of assets in order to avoid execution[[1]](#footnote-1).
2. The court is more ready to grant a post-judgment Mareva injunction for the plaintiff is entitled to enforce the judgment by executing the same on the defendant’s assets. As said by To J in *Menno Leendert Vos v Global Fair Industrial Ltd*[[2]](#footnote-2):-

“9. The nature of Mareva relief is such that the majority of applications are made at a very early stage, sometimes even before commencement of action. However, a Mareva injunction may also be granted to a judgment creditor in aid of execution of his judgment even if he had not applied for or obtained one originally: see *Gee on Mareva Injunctions and Anton Piller Relief*, 4th Ed at 26-30 generally and *Deutsche Schachtbau-und Tiefbohr-Gesellschaft MBH v Shell International Petroleum Co Ltd* [1990] 1 AC 295. The courts are much more ready to grant post-judgment Mareva injunctions because the plaintiff is a judgment creditor entitled to enforce the judgment by executing on the assets of the defendant and even to make him bankrupt or in the case of a corporation to have it wound up. As observed by Sir John Donaldson MR in *Deutsche Schachtbau-und Tiefbohrgesellschaft MmbH v R’as Al Khaimah National Oil Company (No 1)*, [1990] 1 AC 295, such an injunction was not, strictly speaking, an injunction which fell into the Mareva category, but was an injunction granted as protection for a judgment creditor, under a jurisdiction recognised before the emergence of the Mareva jurisdiction.”

1. Accordingly, I have to consider in the circumstances set out above, whether it would be necessary to continue the injunction for the protection of the plaintiff, who is a judgment creditor. In my view, the answer is in the affirmative.
2. It is clear that the defendant at least has the following assets in Hong Kong:-
3. A half share in the Residential Property;
4. Balance in the HSBC account; and
5. Balance in the SCB account.
6. In the circumstances described above, I am satisfied that there would be a real risk that in the absence of the injunction, the defendant would dissipate her assets to frustrate the enforcement of the judgment obtained by the plaintiff in these proceedings. The judgment in the HC action clearly shows that the defendant was trying to assign her interest in the Residential Property to her husband with intent to defraud creditors. Further, the genuineness of the loan claimed by the husband in HCA 2596/2017 is in doubt. Given the finding made by the court in the HC action (ie the intention to defraud creditors by the assignment in question was shared by both the defendant and her husband) and the matters mentioned in paragraphs 12 and 13 above, HCA 2596/2017 may well be another scheme devised by the defendant and her husband for the purpose of defrauding the defendant’s creditors.
7. For these reasons, in my judgment, the injunction is indeed necessary.
8. The injunction contains a disclosure order requiring the defendant to disclose all her assets of an individual value of HK$10,000.00 or more in Hong Kong. I am of the view that this disclosure order is necessary, particularly, the whereabouts of the HK$3 million loan obtained by the defendant is unknown.

*Conclusion*

1. I order that the injunction be continued until full payment of all the sums due under the judgment dated 21 December 2017 by the defendant to the plaintiff or a further order made by this court. I give the parties liberty to apply.
2. I have heard submissions on costs. In my view, costs should follow the event. I order that costs of the summons, including costs of the ex parte application for the injunction and all costs reserved, be to the plaintiff, with a certificate for counsel, and to be taxed if not agreed. The plaintiff’s own costs be taxed in accordance with the Legal Aid Regulations.
3. I thank Mr Ko for the assistance provided to the court.

( MK Liu )

District Judge

Mr Tony Ko instructed by Boase, Cohen & Collins, assigned by the Director of Legal Aid, for the plaintiff

The defendant was not represented and did not appear

1. *Orwell Steel (Erection & Fabrication) Ltd v Asphalt & Tarmac(UK) Ltd* [1984] 1 WLR 1097 [↑](#footnote-ref-1)
2. HCA 4200/1995, 25 March 2010 [↑](#footnote-ref-2)