IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1998] SGHC 349

Suit 920/1998, SIC 4971/98

Between

Glencore International A G

… *Plaintiff*

And

Petromar Energy Resources Pte Ltd

… *Defendant*

GROUNDS OF DECISION

Version No 1: 20 Nov 2026 (00:35 hrs)

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Glencore International A G v Petromar Energy Resources Pte Ltd

[1998] SGHC 349

Suit 920/1998, SIC 4971/98
S Rajendran J
20 October 1998

Judgment :

1. The Plaintiffs, on 12 June 1998, obtained two ex parte orders against the Defendants. One was an Anton Piller order requiring the Defendants to search, examine, remove and copy documents specified in the order that were found in the Defendants' premises and the other was a Mareva injunction prohibiting the Defendants from in any way disposing of its assets in Singapore up to a value of US$21.2m and requiring the Defendants to disclose to the Plaintiffs details of all sums held by the Defendants in bank accounts in Singapore.

2. On 1 July 1998 the Defendants filed this application to have these two orders set aside. At the hearing, the Defendants raised, inter alia, the following issues:

(a) Pre-conditions for the issue of the two orders, namely:

(i) That the Plaintiffs had a good arguable case;

and

(ii) That there was a risk of destruction of documents/ dissipation of assets; had not been sufficiently established by the Plaintiffs.

(b) There was material non-disclosure.

(c) There was a breach of undertaking by the Plaintiffs' solicitors in the execution of the orders.

(d) The application for the ex parte orders was an abuse of process.

(a) (i) Good arguable case.

3. The Defendants submitted at length that the Plaintiffs did not have a good arguable case. Amongst the matters they raised was that in order to bring a claim in conversion the Plaintiffs must show that they had title to the goods at the time of the alleged conversion. The Plaintiffs in their response submitted on the authority of *Dynacast (S) Pte Ltd v Lim Meng Siang & Ors* [1989] SLR 840 that since the Anton Piller order had been executed (apart from some disputed documents which will now have to be disclosed in the ordinary course of discovery) there was no purpose in obtaining the discharge of the Anton Piller order at this stage and that the merits of the Plaintiffs' case could be better dealt with at trial. Miss Belinda Ang, Counsel for the Defendants, objected to such a course of action and pointed out that this court would, in any event, have to deal with the disputed documents seized in the course of the execution of the Anton Piller order and would have to deal with the lifting of the Mareva injunction. She, however, indicated that in order to shorten the proceedings she was prepared to forego her submission that the Plaintiffs did not have a good arguable case with the rider that the court would nevertheless have to consider

Version No 1: 20 Nov 2026 (00:35 hrs)

the merits of the Plaintiffs' case when considering the other matters raised, in particular the question of risk of destruction of documents/dissipation of assets.

4. I would note here that the thrust of the Plaintiffs' submission was that a company called Metro International Trading Inc ("Metro") which operated a storage facility at Fujairah, where the Plaintiffs stored their oil, had, by the issue of false documents, diverted a large quantity of oil belonging to the Plaintiffs that was to be stored at Fujairah to the Defendants. In support of this allegation, the Plaintiffs, besides producing the alleged false documentation, also produced an agreement dated 7 February 1998 ("Agreement") reached between one Stamatis John Kilakos, John Kilakos and a group of companies called the Kilakos group (listed in the schedule to the Agreement) on the one hand and the Plaintiffs on the other wherein the Kilakos group acknowledged that it was unable to account for approximately 1.4 million metric tonnes of oil valued at US$175 million stored by the Plaintiffs at the Fujairah facility. By this Agreement the Kilakos group agreed that it would jointly and severally be liable to the Plaintiffs for the unaccounted amount and agreed to co-operate with the Plaintiffs in ascertaining the exact quantity involved for this purpose give the Plaintiffs full access to the books of the Kilakos group.

5. Metro was one of the companies that was listed in the schedule as part of the Kilakos group and so was the Defendant Company. Apart from signing the Agreement as guarantors, Stamatis John Kilakos and John Kilakos signed the Agreement on behalf of six (including Metro) of the companies named in the schedule as Kilakos group companies. Metro was described as 100% owned, while the Defendant Company was described as 65% owned, by the Kilakos group. There was no signature on behalf of the Defendant Company on the Agreement. In the Agreement the Kilakos group undertook to promptly transfer the net asset value of the Defendant Company to a Kilakos group company.

Version No 1: 20 Nov 2026 (00:35 hrs)

Evidence was led by the Plaintiffs to the effect that it was because the Defendants were not wholly owned by the Kilakos group that this undertaking was asked for and agreed to. The Plaintiffs submitted that it was because the Defendants were substantially controlled by the Kilakos group that Stamatis John Kilakos and John Kilakos were able to give this undertaking.

6. It was the Plaintiffs' case that the Defendants were controlled by the Kilakos group and that the Defendants were part of a conspiracy with Metro to divert the Plaintiffs' oil from the facility at Fujairah. Evidence was led that in correspondence, in brochures and in the oil trade, the Defendants and Metro were treated as being part of the same group. Evidence was also led that Michael Tziolas, the managing director of the Defendant Company, also simultaneously attended to matters on behalf of Metro as an official of Metro. The documentation seized from the Defendants also indicated that Metro was the major supplier of the Defendants. The Plaintiffs led evidence (which included documents seized from the Defendants under the Anton Piller order) that six shipments of oil, belonging to the Plaintiffs, that had been diverted from Fujairah, were shipped by Metro to the Defendants.

7. The Defendants, while admitting a business relationship with Metro, denied the suggestion that they were part of the Kilakos group and they denied any complicity in any wrong-doing that Metro may have been involved in. Evidence was adduced by the Defendants that whilst John Kilakos had previously had an interest in the Defendant Company, he had, in late 1997, divested himself of that interest.

8. Whilst it may be that the link between Metro and the Defendants was a purely commercial one and that, with respect to these shipments, the Defendants were dealing with Metro on an arm's length basis and in entire ignorance of any

Version No 1: 20 Nov 2026 (00:35 hrs)

wrong-doing by Metro, it is not the court's function, at this stage, to make a final determination of that issue: that is a matter for the court conducting the trial to determine. I was, however, satisfied, on the evidence before me, including the evidence adduced by the Defendants, that there was a strong prima facie case that the relationship between the Defendants and Metro went beyond a close commercial relationship and was so close that a strong prima facie case existed that the Defendants were knowingly involved in the alleged wrongful diversion by Metro to the Defendants of the Plaintiffs' oil intended to be stored at the Fujairah facility.

9. The Defendants also raised another matter - that there was no basis to the Plaintiffs' claim against the Defendants in conversion because at the relevant time the title to the goods was not with the Plaintiffs. The Defendants denied this. Whether the Defendants are correct in their submission is a matter for the trial judge to determine. My role at this stage was to assess whether the Plaintiffs had a good arguable case. I was satisfied that they had.

(a) (ii) Risk of destruction of documents/dissipation of assets.

10. Given the very close relationship between Metro and the Defendants, and given the fact that large quantities of the disputed oil were shipped to the Defendants, it was, in my view, reasonable for the Plaintiffs to form the view that incriminating documents would be in the possession of the Defendants. The Defendants submitted that it would not be in their interests to destroy documentation since, if they did so, they would be hard-put to defend any action brought against them in respect of these cargoes by the Plaintiffs or by the Receivers of Metro. And, it was pointed out, that the Plaintiffs did not apply for the court orders until June 1998, some four months after the alleged misappropriation by Metro had come to the Plaintiffs' notice. In the

Version No 1: 20 Nov 2026 (00:35 hrs)

circumstances of this case, although there was no direct evidence that the Defendants would destroy any documents or remove assets out of jurisdiction, I formed the view that the Plaintiffs' fears that these events would occur was a reasonable one. In view of the complexity of this case, I did not consider the delay on the part of the Plaintiffs in applying for the orders to be such that the orders should not have been issued.

(b) Material non-disclosure.

11. Miss Belinda Ang brought up a litany of matters which she claimed were material and should therefore have been disclosed by the Plaintiffs when they applied for the injunction orders.

(b) (i) Failure to disclose that Metro was challenging validity of the 7 February 1998 Agreement.

12. On 27 February 1998 Metro had filed proceedings in Greece against the Plaintiffs in which Metro had claimed that the Plaintiffs had taken advantage of the inexperience of the officers of Metro and had obtained their signatures on the Agreement by deception and threats and that the Agreement was consequently totally illegal and contrary to moral ethics. Miss Belinda Ang submitted that this failure by the Plaintiffs to inform the court of a fact known to the Plaintiffs, namely, that Metro had denied the validity of the Agreement, was a material non-disclosure and was by itself sufficient to set aside the ex parte injunctions.

13. The Plaintiffs did not dispute that a writ had been filed against them in Greece by the Defendants. They pointed out, however, that the writ was not served on them. What is more, the Plaintiffs in February 1998 had themselves

Version No 1: 20 Nov 2026 (00:35 hrs)

commenced proceedings in England against Metro for the sums due under the Agreement. This writ was served on Metro. Metro had attended appearance and had, through leading Counsel, even attended a hearing in court on 3 March 1998 when an application by the Plaintiffs for the appointment of a Receiver against Metro was heard. The Plaintiffs adduced evidence to show that at no stage in the English proceedings had Metro given any indication of any intention to challenge the validity of the Agreement. This was not disputed by the Defendants.

14. In the light of the fact that no challenge was made on the validity of the Agreement in proceedings that were being actively pursued in England, it seems to me that failure on the part of the Defendants to disclose the contents of the writ in Greece - a writ which had not even been served on the Plaintiffs - was understandable and would not constitute a material non-disclosure.

(b) (ii) The Plaintiffs use of an outdated ROC search to support their argument that Metro and the Defendants were one and the same.

15. In their affidavit in support of the ex parte application dated 12 June 1998, the Plaintiffs had enclosed an ROC search dated 9 February 1998 in which Ionnis Kolakos (John Kilakos) was stated to be a director of the Defendants. The Defendants submitted that had a more current ROC search been disclosed to the court, the true state of affairs, ie that John Kilakos was not on the Board of the Defendants, would have been disclosed. The Defendants submitted that by disclosing an out of date search the Defendants had deceived the court.

16. Miss Vivian Ang, Counsel for the Plaintiffs, explained how this "deception" came about. In an affidavit filed by her she stated:

Version No 1: 20 Nov 2026 (00:35 hrs)

" 2. I refer to the instant company search conducted in relation to the Defendant company by my firm on 9 February 1998. This was the search which our instructing solicitors, Messrs Clyde & Co, had requested us to make on or around 9 February 1998 to verify the details of the company.

3. These were the search results that were relied upon by the Plaintiffs in applying for the Anton Piller and Mareva Injunction orders on 12 June 1998 and are exhibited in David Toh's first affidavit as 'DT-1'.

4. I confirm that in the haste in the preparation of the affidavit in support of the Anton Piller Order and Mareva Injunction Order, we did not cause another search of the Defendants to be conducted on behalf of the Plaintiffs. We were not aware at the time of the application that there had been any changes to the company and the first time we became aware of the changes was when we read the first affidavit of Michael Tziolas filed on 1 July 1998.

5. I have also spoken with David Toh on 10 September 1998 and he confirms that he was also not aware at the time the application was made that there had been any changes in the Defendant company and that the first time the Plaintiffs became aware of the changes was when they read the first affidavit of Michael Tziolas. He further confirms that the Plaintiffs had no reason to believe that there would be any change as they thought that the Defendants had all but ceased trading after the collapse of Metro.

6. There was therefore no intention whatsoever on the part of our firm or on the Plaintiffs not to refer to the details of the company as it stood at 12 and 13 June 1998 as there was no knowledge on the part of ourselves or the Plaintiffs that there was any such change. "

Version No 1: 20 Nov 2026 (00:35 hrs)

In court, Miss Vivian Ang submitted, in addition, that the resignation of John Kilakos from the Board (and the purported change in the shareholding of Anita Holdings, a Liberian company which was one of the shareholders of the Defendants) in fact went towards showing that the Defendants were at this time taking steps to distance themselves from Metro (and the Kilakos family) in order to put themselves in a more favourable light in proceedings commenced or to be commenced by the Plaintiffs against Metro and/or the Defendants.

17. I accepted the submissions of Miss Vivian Ang that the non-disclosure in this case was not wilful. I also accepted her submission that the contents of the latest ROC search would not have made any material difference to the issue of the ex parte orders and that, if at all, it would have strengthened the need for the orders in that it went towards showing that the Defendants were attempting to distance themselves from Metro and the Kilakos group.

(b) (iii) Failure to disclose that John Kilakos had no shares in Metro.

18. The Defendants submitted that the Plaintiffs were aware that John Kilakos had no shares in Metro and had failed to disclose this fact. It was alleged that it was because John Kilakos had no shares in Metro that the Plaintiffs had, in a document dated 10 February 1998, agreed to drop John Kilakos as a guarantor in the Agreement. It was not clear from the affidavit of Michael Tziolas on what basis he made the assertion that the Plaintiffs knew that John Kilakos had no shares in Metro but Miss Belinda Ang drew the court's attention to the Greek writ where there was a reference to John Kilakos not having any involvement in the stock or administration of Metro in the context of the Plaintiffs agreeing on 10 February 1998 to releasing John Kilakos as a guarantor of the Agreement.

Version No 1: 20 Nov 2026 (00:35 hrs)

19. The Plaintiffs' position, however, was that it was precisely because John Kilakos was involved in the ownership and management of companies in the Kilakos group that he signed the Agreement as a guarantor. And, it was submitted, the fact that John Kilakos signed on behalf of some of the companies in the Kilakos group indicated that he was involved in their administration. The Plaintiffs asserted that they agreed to the removal of John Kilakos' name as a guarantor not because John Kilakos had no interest in the Kilakos group but because his father, Stamatis John Kilakos, had pleaded with the Plaintiffs to give his son, who was relatively young, a chance to re-build his career.

20. It seemed to me that the factual basis on which the Defendants mounted this submission of failure to disclose was very thin. I was not satisfied that it constituted a material non-disclosure.

(b) (iv) Failure to disclose denials by the Defendants that it is part of Metro.

21. The Defendants had from February 1998 made public statements that they were not in the Metro group. It was submitted that failure by the Plaintiffs to disclose this fact constituted a material non-disclosure. I could not accept that submission. I agreed with Miss Vivian Ang that these were self-serving statements made after the loss of the oil at Fujairah had been discovered and therefore had little evidentiary value. I also agreed with the Plaintiffs' submission that these disclaimers could also be viewed as attempts by the Defendants to distance themselves from Metro in order to try and avoid liability for the oil supplied to it by Metro.

22. Besides the above instances of alleged non-disclosure, Miss Belinda Ang drew the court's attention to a number of other instances where, she submitted, the Plaintiffs did not make any, or any sufficient, disclosure of material

Version No 1: 20 Nov 2026 (00:35 hrs)

information. I will not set them out. Having heard both parties on the matters raised, I am satisfied that there was no merit in these submissions. In my view, the alleged non-disclosures either by themselves or in combination would not have materially affected the decision of the learned judicial commissioner who granted the ex parte orders.

(c) Breach of undertaking by the Plaintiffs' solicitors in the execution of the orders.

23. In response to the submission by Miss Belinda Ang that the Plaintiffs' solicitors had removed documents outside the purview of the Anton Piller order, Miss Vivian Ang took me through the Supervising Solicitors' Report and referred me to some of the documents in question. It was apparent from his records that the Supervising Solicitor was meticulous in ensuring that only documents covered by the Anton Piller order were removed. Towards that end the Supervising Solicitor had established a protocol where no document would be removed without the express approval of the Defendants' authorised representative. Where parties could not agree whether the removal of a document was authorised, the document was retained by the Supervising Solicitor as a disputed document.

24. Having gone through the records kept, I am satisfied that all documents removed by the Plaintiffs were removed only with the consent of the Defendants' representative. There was, in my view, no merit in the Defendants' complaint that solicitors for the Plaintiffs had acted outside their authority and in breach of undertaking.

(d) Abuse of process.

Version No 1: 20 Nov 2026 (00:35 hrs)

25. The Defendants complained that the Plaintiffs, in taking out the ex parte orders, were acting mala fide. It was alleged that the ex parte orders were sought because otherwise the Plaintiffs would have had insufficient evidence to support their claim against the Defendants.

26. The Plaintiffs' response was that the Plaintiffs, when they took out the applications, already knew and had stated what their case was. Their purpose in taking out the orders was to preserve the evidence and the assets. I accepted the Plaintiffs' submissions. This did not appear to me to be a case of a plaintiff abusing the process of court by embarking on a "fishing" exercise.

Hearsay.

27. Miss Vivian Ang, after the Defendants had made their submissions, objected to a considerable part of the affidavit of Michael Tziolas on the grounds that it contained hearsay and was therefore inadmissible in evidence unless the source of the hearsay was specifically identified. She pointed out that the source of the hearsay was in all probability Metro and the identification of the source would go towards establishing that there was an extremely close link between the Defendants and the Kilakos group.

28. The affidavit of Michael Tziolas did contain a considerable amount of hearsay. Hearsay is admissible in affidavits filed in interlocutory proceedings provided the source of the hearsay is disclosed. In the drafting of Michael Tziolas' affidavit, insufficient attention appears to have been paid to the need to specifically identify the source of hearsay evidence. But although the source was not identified with the precision that one would expect, Miss Belinda Ang was able to demonstrate that the source of the information was discernible from the affidavit and from the documents exhibited.

Version No 1: 20 Nov 2026 (00:35 hrs)

29. Where hearsay evidence is being adverted to, it is unsatisfactory to be indirect or vague about the source of the hearsay. The other parties to the suit and the court should not be left to infer the source from the exhibits annexed to the affidavit. In this particular case, however, I was, in the light of Miss Belinda Ang's explanations, prepared to give the benefit of the doubt to the Defendants. I therefore overruled the objection.

Decision.

30. In *Computerland Corp v Yew Seng Computers Pte Ltd* [1991] 3 MLJ 201, the Court of Appeal warned of the dangers of Anton Piller orders being issued too freely. The headnote to the case states:

> " (4) The draconian nature of the Anton Piller order cannot be over-emphasized and it should be granted only in exceptional circumstances. It is imperative that on every application for an Anton Piller order the party seeking it must satisfy the stringent requirements laid down in the Anton Piller case and the court must scrutinize with care the evidence produced, and must be very circumspect in granting such an order. The court has to balance 'the plaintiff's right to recover his property or to preserve evidence' against 'violation of the privacy of a defendant who has had no opportunity to put his side of the case'. Any such order should be granted if the court is satisfied that there is a real risk of justice being frustrated or thwarted. "

There was, in my view, a real risk of justice being thwarted in this case. Balancing the Plaintiffs' rights in the matter against the violation of the privacy of the Defendants, I formed the view that the Anton Piller order and the Mareva injunction in this case had been properly applied for and issued. Accordingly, I dismiss with costs this application to set aside the two orders.

S Rajendran

Version No 1: 20 Nov 2026 (00:35 hrs)

Judge

S Rajendran J

Belinda Ang SC with Hong Heng Leong (Ang & Pnrs) for the appellants/defendants
Vivian Ang with Corina Song (Allen & Gledhill) for the respondents/plaintiffs

---

Version No 1: 20 Nov 2026 (00:35 hrs)