IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2019] SGCA 52

Civil Appeal No 109 of 2018 (Summons No 58 of 2019)

Between

Suntech Power Investment Pte Ltd

… *Respondent/Appellant*

And

Power Solar System Co Ltd
(in liquidation)

… *Applicant/Respondent*

In the matter of Suit No 59 of 2014

Between

Power Solar System Co Ltd
(in liquidation)

… *Plaintiff*

And

Suntech Power Investment Pte Ltd

… *Defendant*

GROUNDS OF DECISION

[Courts and Jurisdiction] — [Appeals] — [Striking out]
[Abuse of Process]

Version No 1: 27 Oct 2020 (22:41 hrs)

TABLE OF CONTENTS

INTRODUCTION **1**

THE FACTUAL BACKDROP **2**

THE PARTIES 3

THE SUIT 5

The Mareva injunction *6*

The judgment in the Suit and the filing of CA 109/2018 ..... *8*

Extension and subsequent conversion of the Mareva injunction *8*

The contempt of court proceedings *9*

SUM 58 12

OUR DECISION **13**

THE LAW 14

THE DISPOSAL OF THE APPELLANT'S SHARES IN SHANGHAI SUNTECH 17

Explanation for disposal of the appellant's shares in Shanghai Suntech not credible *18*

The Contempt Order and the need to comply with the Mareva injunction *21*

No attempts to comply with the Mareva injunction *23*

THE APPELLANT'S FAILURE TO COMPLY WITH ITS DISCLOSURE OBLIGATIONS 27

Numerous reminders given *28*

Explanation for long delay in providing disclosure of assets not credible *29*

Disclosure made not sufficient, and in fact disclosed further breaches of the Mareva injunction *31*

CONCLUSION.....33

ANNEX A.....36

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.

Suntech Power Investment Pte Ltd
v
Power Solar System Co Ltd (in liquidation)

[2019] SGCA 52

Court of Appeal — Civil Appeal No 109 of 2018 (Summons No 58 of 2019)
Sundaresh Menon CJ, Andrew Phang Boon Leong JA and Chao Hick Tin SJ
27, 31 May; 17 July 2019

27 September 2019

Andrew Phang Boon Leong JA (delivering the grounds of decision of the court):

Introduction

1 When can a party who has hitherto been found to have been in contumelious breach of orders of court be said to have complied with the said orders? Much will of course depend on the precise facts and circumstances of the case. What is clear is that the court concerned will scrutinise closely the substance – and not merely the form – of the actions taken by that party in relation to the orders of court made. In this regard, the first port of call will be the language of the orders of court themselves. Such language will be construed to ensure that there is compliance with not just the strict letter of the orders concerned, but also their purpose and spirit as well.

2 Hence, where there is purported compliance by way of acts that do not comport with what the orders of court were intended to achieve in the first place,

such acts would *not* suffice and the party concerned would continue to be in contumelious breach of the orders of court. The result of such continued legal recalcitrance will almost invariably be severe.

3 In the present case, for example, we found that there was – notwithstanding the actions taken by the party concerned (the appellant in the substantive appeal, Civil Appeal No 109 of 2018 ("CA 109/2018")) – continued (and contumelious) breach of orders of court issued by the court below, in particular, a Mareva injunction. We therefore ordered that unless the appellant paid into court by 7 August 2019 the value of a key asset which it had dissipated in breach of the said Mareva injunction, its appeal would be struck out as an abuse of the process of the court. We note at this juncture that although we found, as we will explain below, the appellant's argument that it had not been aware of its non-compliance with the Mareva injunction to be weak and even contrived, given the fact that a party would only be found to be in breach of court orders in general, and in contempt of court in particular, if this was clear beyond reasonable doubt (see, for example, the decision of this court in *Mok Kah Hong v Zheng Zhuan Yao* [2016] 3 SLR 1 at [85]), we furnished the appellant with one final opportunity to comply with the Mareva injunction by way of the aforementioned unless order.

4 We now set out the detailed grounds for our decision.

The factual backdrop

5 Summons No 58 of 2019 ("SUM 58"), as it was originally filed by the respondent, Power Solar System Co Ltd, was an application for an unless order to the effect that unless the appellant, Suntech Power Investment Pte Ltd, paid into court the judgment sum awarded to the respondent in Suit No 59 of 2014

Version No 1: 27 Oct 2020 (22:41 hrs)

("the Suit") as well as complied with a number of other orders made by the court below, its appeal in CA 109/2018 against the decision rendered in the Suit would be dismissed or, alternatively, stayed without further order. SUM 58 was subsequently amended, pursuant to leave granted by this court, to include a prayer that CA 109/2018 be struck out for being an abuse of the court's process because the appellant was in contumelious breach of the Mareva injunction mentioned at [3] above.

6 The alleged contumelious breaches of the Mareva injunction involved the appellant's disposal of its key assets, coupled with its continued failure to account for those disposals and to restore those assets or their equivalent in value to its asset pool. The respondent argued that the appellant was also not forthcoming with the disclosure of its assets pursuant to the Mareva injunction, and throughout the proceedings, it did not provide any satisfactory explanations for its breaches.

7 For the purpose of setting out the context in which SUM 58 arose, we will give a brief background of the parties and the events leading to the filing of SUM 58. Subsequently, where relevant, we will discuss the appellant's conduct in relation to the Mareva injunction in greater detail.

The parties

8 The respondent is a company incorporated in the British Virgin Islands and wholly owned by Suntech Power Holdings Co Ltd ("SPH"), a company incorporated in the Cayman Islands. The respondent operated as an investment holding company, whereas SPH was a solar panel producer previously listed on the New York Stock Exchange. SPH was the ultimate holding company for

Version No 1: 27 Oct 2020 (22:41 hrs)

multiple subsidiaries and affiliated companies, which we will refer to collectively as "the SPH Group".

9 The appellant is a company incorporated in Singapore and was previously part of the SPH Group. It operated as an investment holding company engaged in equity investments. The appellant was also once a wholly-owned subsidiary of the respondent. This was during the period between 8 October 2007 and 15 May 2013. Thereafter, the respondent transferred its shares in the appellant to Wuxi Suntech Power Co Ltd ("Wuxi Suntech"), another wholly-owned subsidiary of the respondent. At that particular point in time, Wuxi Suntech was in bankruptcy reorganisation under the laws of the People's Republic of China, and a group of ten individuals was appointed as its administrator.

10 The SPH Group's principal operations were all controlled or managed out of Wuxi Suntech's offices. It was not disputed that all the accounting and financial records were prepared, held and stored by Wuxi Suntech.

11 On 7 November 2013, SPH was placed into provisional liquidation, and on 27 January 2015, it was placed into official liquidation. The respondent was placed into liquidation on 14 November 2013 via a sole shareholder's resolution passed by SPH's joint provisional liquidators.

12 On 12 February 2014, Wuxi Suntech entered into an agreement with Fast Fame Global Limited ("Fast Fame") for the transfer of its shares in the appellant to the latter for US$1. New directors were appointed to the appellant's board. One of them was Bai Yun, who affirmed most of the affidavits filed on behalf of the appellant in the Suit below and in SUM 58.

Version No 1: 27 Oct 2020 (22:41 hrs)

13 Subsequent to the transfer of Wuxi Suntech's shares in the appellant to Fast Fame, the respondent's shares in Wuxi Suntech were transferred to an entity named Jiangsu Shunfeng Photovoltaic Technology Co Ltd, which is a wholly-owned subsidiary of a company known as Shunfeng Photovoltaic International Limited.

14 As a result, the respondent no longer controls Wuxi Suntech and the appellant. Instead, one Zheng Jianming is now the controlling shareholder of Wuxi Suntech, and, as we will explain below (at [69]), it is likely that he is also the ultimate controller of the appellant.

15 Prior to the above breaking up of the SPH Group, the respondent alleged that it had, under its previous management, entered into a number of transactions with the appellant. Those transactions formed the basis of the respondent's claims against the appellant in the Suit below. As the appellant's assets lay in the many subsidiaries it controlled either directly or indirectly, the respondent was very concerned about the appellant's actions in relation to those subsidiaries. This became an important consideration for the respondent when it took out a Mareva injunction against the appellant in the Suit, and it later also became the central focus of SUM 58.

The Suit

16 The respondent commenced the Suit against the appellant on 14 January 2014 for: (a) the amount due under three loans made by the respondent to the appellant which were repayable on demand ("the Loans claim"); and (b) the purchase price of US$55.56m which was allegedly payable by the appellant to the respondent under a share transfer agreement between them dated 8 August 2008 ("the Share Price claim"). The total quantum of the respondent's claims,

Version No 1: 27 Oct 2020 (22:41 hrs)

as stated in its Statement of Claim (Amendment No 2) dated 6 February 2015, was US$197,501,785.

17 The share transfer agreement in question in the Share Price claim was an agreement for the sum of US$55.56m to be paid by the appellant to the respondent for the appellant's purchase of the respondent's 100% shareholding in Suntech Power Co Ltd ("Shanghai Suntech"). As a result of this share transfer agreement, the appellant became the sole shareholder of Shanghai Suntech.

The Mareva injunction

18 On or around 13 March 2014, the respondent discovered that the appellant had sold its shares in four of its subsidiaries with a combined net asset value of approximately RMB868,816,625 as at 28 February 2014. The respondent also suspected that the appellant was attempting to dispose of its shareholdings in two of its other subsidiaries.

19 In the light of the above discovery, the respondent filed a summons in the Suit seeking a worldwide Mareva injunction against the appellant ("the Mareva injunction"). This was granted by Judith Prakash J (as she then was) on 4 September 2014.

20 The Mareva injunction contained the usual orders, which we summarise below:

(a) The appellant must not in any way dispose of, deal with or diminish the value of any of its assets, whether in or outside Singapore, and this included *all* of the appellant's subsidiaries.

Version No 1: 27 Oct 2020 (22:41 hrs)

(b) The appellant must inform the respondent in writing of all of its assets, whether in or outside Singapore, giving the value, location and details of all such assets (in particular, the value, location and details of *all* of the appellant's subsidiaries).

(c) The appellant must inform the respondent of: (i) the steps (if any) that the appellant and its subsidiaries had taken to transfer, dispose of or deal with the appellant's assets; and (ii) the proceeds or profits/losses (if any) derived from such transfer, disposal or dealing.

(d) The appellant must confirm the information at sub-paras (b) and (c) above in an affidavit sworn or affirmed (as the case may be), which must be served on the respondent's solicitors within 21 days after the date of service of the Mareva injunction on the appellant ("disclosure of assets affidavit").

(e) The appellant was under an obligation to inform the respondent whenever it dealt with or disposed of any of its assets in the ordinary and proper course of business.

21 The Mareva injunction defined "[s]ubsidiary" as "all and any other of the [appellant's] joint-ventures, subsidiary or associated companies or other entities (whether in or outside Singapore) in which the [appellant] holds a controlling interest, or such shares of such [s]ubsidiary as are owned (directly or indirectly) by the [appellant]". It also set out a list of specific assets of the appellant which were to be frozen (along with all the other assets of the appellant) under the Mareva injunction. This list included the appellant's shares in Shanghai Suntech.

Version No 1: 27 Oct 2020 (22:41 hrs)

22 The very objective of the Mareva injunction was to freeze, internationally, the appellant's assets up to the value of US$197,501,785, which was the total amount claimed by the respondent in the Suit.

The judgment in the Suit and the filing of CA 109/2018

23 The trial for the Suit was held from 14 to 17 May 2018, and on 5 July 2018, the trial judge ("the Judge") gave judgment for the respondent for the sum of US$197,501,785. She found that both the Loans claim and the Share Price claim were made out. She also ordered the appellant to pay the respondent the costs of the Suit in the sum of S$120,000 and disbursements in the sum of S$120,291.40 (collectively, "the Costs of the Suit"). The Judge's decision in the Suit ("the Judgment") is reported in *Power Solar System Co Ltd (in liquidation) v Suntech Power Investment Pte Ltd* [2018] SGHC 233.

24 The very next day, on 6 July 2018, the appellant filed its notice of appeal for CA 109/2018.

25 Up till the delivery of the Judgment and the filing of the appellant's notice of appeal above, the appellant had yet to file its disclosure of assets affidavit pursuant to the Mareva injunction even though it was by then almost four years since the Mareva injunction was ordered.

Extension and subsequent conversion of the Mareva injunction

26 After the issuance of the Judgment, the respondent applied for and obtained a 60-day extension of the Mareva injunction.

27 On 8 August 2018, the respondent applied to convert the Mareva injunction into a post-judgment Mareva injunction to aid the enforcement of the

Version No 1: 27 Oct 2020 (22:41 hrs)

Judgment (the "conversion application"). The respondent also applied for its security for costs and its fortification of its undertaking for damages under the Mareva injunction to be paid out to it (the "payment out of court application").

28 The parties subsequently entered into a without prejudice discussion on, *inter alia*, the respondent's conversion application. To facilitate the negotiations as well as to preserve the status quo, the parties entered into a by-consent order on 27 August 2018 to extend the Mareva injunction until 10 September 2018 or until the disposal of the conversion application, whichever was later.

29 The negotiations between the parties came to naught, and both the conversion application and the payment out of court application were restored and heard on 6 December 2018. The Judge granted the respondent's prayers in both applications. She also ordered that the appellant pay the respondent costs for both applications, which she fixed at S$5,500.

The contempt of court proceedings

30 It was evident from the by-consent order entered into by the parties on 27 August 2018 to extend the Mareva injunction that the appellant was aware of the Mareva injunction and the obligations contained therein. Despite this knowledge, the appellant breached the Mareva injunction by its continuing failure to file its disclosure of assets affidavit. This was despite the fact that as at 27 August 2018, almost four years had passed since the Mareva injunction was issued.

31 To make matters worse, shortly after entering into the by-consent order to extend the Mareva injunction, the appellant, in breach of the Mareva injunction, disposed of a number of its assets, including its shares in Shanghai

Version No 1: 27 Oct 2020 (22:41 hrs)

Suntech, which were a key asset in the Share Price claim brought by the respondent (see above at [17]). The appellant transferred its shares in Shanghai Suntech for a mere RMB2 to Shanghai Shihao Trade Development Co Ltd ("Shanghai Shihao") and Zhenjiang Rietech New Energy Technology Co Ltd ("Zhenjiang Rietech") sometime in September 2018. As Zhenjiang Rietech was wholly owned by Shanghai Shihao, the latter in effect became the ultimate owner of Shanghai Suntech.

32 It also came to light that the appellant had, in addition, disposed of two of its subsidiaries *after* the Mareva injunction was issued. These subsidiaries were:

(a) Suntech R&D Australia Pty Ltd ("Suntech R&D"), a wholly-owned subsidiary of the appellant, which had assets worth approximately A$1.9m. This subsidiary began its voluntary winding-up process on 13 November 2014 (slightly over two months after the Mareva injunction was imposed) and was de-registered on 28 January 2017; and

(b) Rietech Investments Ltd ("Rietech Investments"), a subsidiary which was struck off the register of companies in Hong Kong and dissolved on 5 January 2018. This subsidiary owned a number of subsidiaries with a combined net asset value of RMB363.2m.

33 After the respondent discovered the above breaches of the Mareva injunction in late 2018, it sought leave on 31 January 2019, by way of Summons No 608 of 2019 ("SUM 608"), to commence committal proceedings against the appellant. On 12 March 2019, leave was granted and the respondent applied for an Order for Committal against the appellant.

Version No 1: 27 Oct 2020 (22:41 hrs)

34 On 6 April 2019, the eve of the hearing of the committal proceedings, Bai Yun filed his 17th affidavit ("BY's 17th Affidavit") to explain the appellant's breaches of the Mareva injunction.

35 On 8 April 2019, the committal application was heard and the Judge found the appellant to be in contempt of court for committing all of the above breaches of the Mareva injunction (see [30]–[32] above). As a consequence, she ordered that:

(a) the appellant pay a fine of S$100,000;

(b) the appellant pay into court S$100,000 to secure its compliance with the Mareva injunction until its expiry; and

(c) the appellant pay the respondent the costs of SUM 608 as well as the costs incidental to and also of the issue and execution of this order and any order made therein (collectively, "the costs of the committal proceedings"), with the quantum of such costs to be fixed, if not agreed within 14 days of the order, by the court upon either party's application.

The above is hereafter referred to as "the Contempt Order". The appellant did not appeal against the Judge's findings on contempt.

36 Pursuant to the Contempt Order, the parties agreed that the costs of the committal proceedings should be in the sum of S$9,906.25.

37 The costs of the committal proceedings, the costs of the conversion application and the costs of the payment out of court application will be collectively referred to hereafter as "the Miscellaneous Application Costs".

Version No 1: 27 Oct 2020 (22:41 hrs)

SUM 58

38 Despite the issuance of the Contempt Order, the appellant did not comply with the Mareva injunction and the Contempt Order. This prompted the respondent to file SUM 58 on 13 May 2019 for, *inter alia*, CA 109/2018 to be dismissed or, alternatively, stayed without further order unless the appellant:

(a) paid the respondent the Costs of the Suit and the Miscellaneous Application Costs;

(b) paid into court the judgment sum of US$197,501,785 and the security of S$100,000 imposed under the Contempt Order; and

(c) paid the fine of S$100,000 imposed under the Contempt Order.

39 The respondent argued that the appellant was in contumelious breach of the Mareva injunction. It also argued that the appellant had not purged its contempt by complying with the Mareva injunction and had not complied with the Contempt Order.

40 SUM 58 was heard over three days. This was because we granted two adjournments to give the appellant the chance to file further affidavits to account for its breaches of the Mareva injunction and to explain the steps it had taken, if any, to comply with the Mareva injunction. The appellant filed two affidavits as follows:

(a) During the first adjournment, the appellant filed Bai Yun's first affidavit ("BY's 1st Affidavit"), which was exhibited in Danitza Hon Cai Xia's first affidavit dated 30 May 2019.

Version No 1: 27 Oct 2020 (22:41 hrs)

(b) During the second adjournment, the appellant filed Bai Yun's second affidavit ("BY's 2nd Affidavit"), which was exhibited in Danitza Hon Cai Xia's second affidavit dated 21 June 2019.

41 During the course of SUM 58, the appellant paid the fine and the security imposed under the Contempt Order as well as the Miscellaneous Application Costs. The respondent then filed Summons No 74 of 2019 ("SUM 74") for leave to amend SUM 58 to exclude the prayers in relation to the payment of the fine, the aforesaid security and the Miscellaneous Application Costs. In SUM 74, in the light of the appellant's affidavits above, the respondent also sought to add to SUM 58 a prayer asking this court to strike out CA 109/2018 on the grounds that it was an abuse of the court's process. This application was supported by Mr Yat Kit Jong's first affidavit in SUM 74 ("YKJ's Affidavit"), which was filed under the cover of Mr Leong Ji Mun Gregory's first affidavit dated 28 June 2019.

42 We allowed the appellant to reply to YKJ's Affidavit, and the appellant did so on 11 July 2019 by way of Bai Yun's affidavit dated 8 July 2019 in SUM 74.

Our decision

43 On 17 July 2019, we resumed the hearing of SUM 58, which was heard along with SUM 74. At this hearing, the appellant did not object to SUM 74, so we granted the respondent's application for leave to amend SUM 58.

44 We found in favour of the respondent in respect of SUM 58 as amended. The appellant's breaches of the Mareva injunction were contumelious and amounted, in our view, to an abuse of the court's process. We found that the

Version No 1: 27 Oct 2020 (22:41 hrs)

disclosure of the appellant's assets made in BY's 2nd Affidavit, which was filed more than four years after the imposition of the Mareva injunction, was wholly inadequate and did not comply with the relevant terms of the Mareva injunction. In so far as the appellant's disposal of assets in breach of the Mareva injunction was concerned, we found that the appellant had not sufficiently accounted for those disposals and had taken no steps whatsoever to restore the value which it had potentially lost as a result of those disposals. In summary, the appellant had not complied with the Mareva injunction.

45 We therefore found that the appellant's contumelious breaches of the Mareva injunction showed that it had no genuine or *bona fide* interest in obtaining the relief it sought from filing CA 109/2018. In short, the appellant's filing of the notice of appeal for CA 109/2018 on 6 July 2018 was an abuse of the court's process. We were minded as such to strike out CA 109/2018. However, in the interests of justice and fairness to the appellant (see [3] above and [97] below), we ordered that unless the appellant paid into court the value of its shares in Shanghai Suntech, which we took to be US$55.56m (this being the quantum of the Share Price claim in the Suit), by 7 August 2019, CA 109/2018 would be struck out as an abuse of the court's process.

The law

46 In *Riduan bin Yusof v Khng Thian Huat and another* [2005] 2 SLR(R) 188 ("*Riduan*") at [17], we held that the Court of Appeal has the inherent jurisdiction to strike out a notice of appeal where the appeal is plainly not competent, or where the appeal is frivolous, vexatious or an abuse of the process of the court.

Version No 1: 27 Oct 2020 (22:41 hrs)

47 The burden of showing that a notice of appeal should be struck out for abuse of process lies on the party applying for such striking out, and this court will only exercise its power to strike out a notice of appeal in "clear and obvious cases" (see *Riduan* at [20]–[21]).

48 Although this court's power to strike out a notice of appeal is derived not from the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("the Rules of Court") but from its inherent powers, guidance on the exercise of this power may be had from how the court exercises its striking-out power under O 18 r 19 of the Rules of Court (see *Riduan* at [26]).

49 In *Gabriel Peter & Partners (suing as a firm) v Wee Chong Jin and others* [1997] 3 SLR(R) 649 at [22], we explained the phrase "abuse of process" in O 18 r 19(1)(*d*) of the Rules of Court 1996 as follows:

> The term, "abuse of the process of the Court", in O 18 r 19(1)(*d*) … includes considerations of public policy and the interests of justice. This term signifies that the process of the court must be used *bona fide* and properly and must not be abused. The court will prevent the improper use of its machinery. It will prevent the judicial process from being used as a means of vexation and oppression in the process of litigation. *The categories of conduct rendering a claim frivolous, vexatious or an abuse of process are not closed and will depend on all the relevant circumstances of the case.* A type of conduct which has been judicially acknowledged as an abuse of process is the bringing of an action for a collateral purpose, as was raised by the respondents. In *Lonrho plc v Flayed (No 5)* [1993] 1 WLR 1489, Stuart-Smith LJ stated that, *if an action was not brought* bona fide *for the purpose of obtaining relief but for some other ulterior or collateral purpose, it might be struck out as an abuse of the process of the court.* [emphasis added]

50 In *Jtrust Asia Pte Ltd v Group Lease Holdings Pte Ltd and others* [2018] 2 SLR 159, in ascertaining whether the legal proceeding that was brought was an abuse of the court's process, we held at [102] that:

Version No 1: 27 Oct 2020 (22:41 hrs)

> … *The court must consider whether the plaintiff applying for Mareva relief truly has no genuine interest in obtaining a legal remedy through the underlying action, and decide whether, in all the circumstances, his predominant purpose behind the application is properly to be regarded as collateral or ulterior, and thereby renders the application an abuse of the court's process. The court must analyse any allegation of collateral or ulterior purpose with care and rigour, for such allegations can easily be made. In particular, the court must assess the cogency of the evidence adduced to support the allegation and the substance of the purpose that is said to be collateral or ulterior.* Often, it will be said that the plaintiff's purpose is to oppress the defendant financially. In this regard, it must be remembered that just because the injunction will have an inevitable financial impact on the defendant does not mean that the plaintiff has a predominant collateral purpose to cause that impact. Instead, *close attention to the circumstantial evidence will often be necessary in order to decide whether it can be inferred that the plaintiff has such a purpose, for it will in most cases hardly be made explicit*, especially when a good arguable case and a real risk of dissipation have been established and in that process would have clothed the plaintiff's action with a reasonable semblance of legitimacy. [emphasis added]

51 We would add that where a party can show that the other party has been and continues to be in contumelious breach of a court order, it would be reasonable and logical for the court, especially when the latter party has already been held to be in contempt of court for breaching the said court order, to find that such conduct evidences a lack of genuine or *bona fide* interest on the part of that party in obtaining the reliefs it is seeking from instituting legal proceedings. In the present case, the appellant's continuing breach of a court order – *viz*, the Mareva injunction – was sufficient for this court to reach the conclusion that it had filed its notice of appeal for CA 109/2018 for an ulterior or collateral purpose.

52 The court will scrutinise the language and the spirit of the underlying court order concerned to determine whether the party in breach has complied with it. As we pointed out earlier (at [2] above), where there is purported

Version No 1: 27 Oct 2020 (22:41 hrs)

compliance by way of acts that do not comport with what the order of court was intended to achieve in the first place, such acts would *not* suffice and the party concerned would continue to be in contumelious breach of the order of court. The result of such continued legal recalcitrance will almost invariably be severe. In the case of appeals, the court will either strike out the appeal or make an unless order giving the party in breach a final chance of compliance. Much will depend on the facts and circumstances of the case.

53 In the present case, the appellant's disposal of its shares in Shanghai Suntech in breach of the Mareva injunction and its failure to comply with its disclosure obligations thereunder were critical to our finding that it was and continued to be in contumelious breach of the Mareva injunction. We deal first with the appellant's disposal of its shares in Shanghai Suntech.

The disposal of the appellant's shares in Shanghai Suntech

54 To recapitulate, the centrality of Shanghai Suntech in the Suit lay in the fact that one of the respondent's claims against the appellant was the Share Price claim for the sum of US$55.56m. This was the price the appellant had allegedly agreed to pay the respondent when it purchased the latter's 100% shareholding in Shanghai Suntech pursuant to the share transfer agreement dated 8 August 2008 (see above at [16]–[17]).

55 When the Mareva injunction was imposed on 4 September 2014, the appellant's shares in Shanghai Suntech were listed as one of the specific assets of the appellant that were to be frozen under the said injunction (see [21] above). Shanghai Suntech was an active subsidiary of the appellant. We found this to be so because the appellant admitted that as at September 2018, Shanghai

Version No 1: 27 Oct 2020 (22:41 hrs)

Suntech had some 1,200 employees and fixed assets worth up to RMB879,087,566.72, although those assets were heavily encumbered.

56 Despite the Mareva injunction, the appellant proceeded to dispose of its shares in Shanghai Suntech sometime in September 2018 for a meagre RMB2 (see [31] above). It sold the shares to Shanghai Shihao and Zhenjiang Rietech, which we found were related to Bai Yun, one of the directors of the appellant. Shanghai Shihao and Zhenjiang Rietech were also controlled by the ultimate controller of the appellant. As such, the appellant and the buyers of its shares in Shanghai Suntech were all related.

57 We found the appellant's disposal of its shares in Shanghai Suntech to constitute contumelious breach of the Mareva injunction for the following reasons.

Explanation for disposal of the appellant's shares in Shanghai Suntech not credible

58 First, the appellant's explanation for the disposal of its shares in Shanghai Suntech was not credible. In fact, we would venture to say that it showed the appellant's cynical attitude towards the Mareva injunction and, hence, towards this court's authority. In BY's 17th Affidavit filed in the committal proceedings below, the appellant explained that the disposal of its shares in Shanghai Suntech was necessary in order to save Shanghai Suntech and so save 1,200 jobs. The appellant claimed that Shanghai Suntech had been in financial distress since 2014, and to save the company, the appellant had to sell its shares in the company to Shanghai Shihao and Zhenjiang Rietech for RMB2 so that those two new owners could inject fresh capital into the company. Given the urgency of the situation, the appellant sold its shares in Shanghai

Version No 1: 27 Oct 2020 (22:41 hrs)

Suntech without consideration for the Mareva injunction. The appellant repeated this same explanation in BY's 1st Affidavit and BY's 2nd Affidavit filed in SUM 58 during the two adjournments granted by this court.

59 However, the appellant did not furnish any board papers relating to its decision to sell its shares in Shanghai Suntech or any background papers justifying the alleged desperate need to dispose of those shares. The only evidence of Shanghai Suntech's financial situation consisted of the balance sheets and profit statements the appellant provided in Bai Yun's affidavits. We found that those balance sheets and profit statements were not useful evidence to show why the appellant had to dispose of its shares in Shanghai Suntech so urgently in September 2018 that there was no time for it to inform the court and the respondent of the dire financial situation Shanghai Suntech was said to be facing. There was therefore no credible evidence justifying the alleged urgency to salvage Shanghai Suntech without informing the court and the respondent. Further, if Shanghai Suntech had indeed been in financial distress since 2014 and urgently needed to be saved (as the appellant contended), the appellant could and should have informed the court and the respondent of this either at the time the Mareva injunction was imposed on 4 September 2014 or as soon as possible thereafter. The appellant did not, however, do so. In addition, we found the timing of the appellant's disposal of its shares in Shanghai Suntech suspicious for two reasons. First, the disposal took place only in September *2018* even though, according to the appellant, Shanghai Suntech had been in financial distress since *2014*. This belied the appellant's assertion that Shanghai Suntech had to be urgently sold in September 2018 so as to salvage it. Second, less than a month before disposing of its shares in Shanghai Suntech, the appellant had entered into without prejudice negotiations with the respondent on the latter's conversion application and had consented to an extension of the

Version No 1: 27 Oct 2020 (22:41 hrs)

Mareva injunction so as to (among other things) facilitate the negotiations (see [28] above). If Shanghai Suntech had truly been in a precarious financial situation at that time, this could and should have been raised during the negotiations, but the appellant made no mention of it at all.

60 The appellant's explanation for its failure to inform the respondent of its disposal of its shares in Shanghai Suntech was set out in BY's 2nd Affidavit in SUM 58 as follows:

> 83. The Appellant was under the belief that the transaction was carried-out as part of the proper and ordinary course, as a holding company, of dealing with loss making or non-performing subsidiaries, on which the survival [of] thousands of jobs hinged, and accordingly fell within the exception under paragraph 3 to the Mareva Order …
>
> 84. Further, the transaction did not involve any outgoing payments of the Appellant's money, the Appellant did not believe (rightly or wrongly) that it was under an obligation to inform the Respondent, either before or after the transaction.
>
> 85. Nonetheless, the Court below found the Appellant to have been in breach of the Mareva Order, and the Appellant accepts such determination. It has thus since paid the Fine and [the] Security.

61 We found that there was no basis whatsoever for the appellant to believe that it was not under any obligation to inform the respondent of its disposal of its shares in Shanghai Suntech. This was because para 3 of the Mareva injunction clearly stated:

> This Order does not prohibit the [appellant] from dealing with or disposing of any of its assets in the ordinary and proper course of business. *The [appellant] shall account to the [respondent] at intervals of two (2) weeks for the amount of money dealt with or disposed of in this regard.* [emphasis added]

Version No 1: 27 Oct 2020 (22:41 hrs)

The appellant's explanation as set out above only showed its cavalier attitude towards the Mareva injunction.

The Contempt Order and the need to comply with the Mareva injunction

62 Second, the appellant was wholly mistaken to believe that just because it had paid the fine and the security imposed under the Contempt Order, it need not restore the value of its shares in Shanghai Suntech back into its asset pool in order to comply with the Mareva injunction. The appellant submitted before us that the Contempt Order did not require it to restore any alleged lost value and the respondent had not applied for any such order. The appellant then argued that faulting it for not restoring the value of its shares in Shanghai Suntech back into its asset pool would be "tantamount to punishing the [a]ppellant twice for the same wrong" as it had already been fined S$100,000 for its disposal of those shares in breach of the Mareva injunction.

63 With respect, by proffering the argument referred to in the preceding paragraph, the appellant conflated two distinct and separate legal principles. The sanctions and punishments imposed for conduct which amounts to contempt of court arising from breaches of the court's orders (*ie*, the breaches of the Mareva injunction in this case) are intended to punish the contemnor for the breaches themselves. Put simply, one must distinguish the obligations to be complied with under a court order from the sanctions and punishments that are imposed when such obligations are not complied with. Both the obligations on the one hand and the corresponding sanctions and punishments on the other are related but distinct. The sanctions and punishments therefore do not in any way absolve the contemnor from complying with the underlying court order that gave rise to the contempt proceedings in the first place. This logical distinction can best be

Version No 1: 27 Oct 2020 (22:41 hrs)

understood in the context of a breach of a Mareva injunction where the party breaching its terms is also found to be in contempt of court for doing so.

64 To recapitulate, in the present case, the Mareva injunction's primary function was to freeze the appellant's assets up to the total amount claimed in the Suit, and one of the assets frozen under this order were the appellant's shares in Shanghai Suntech. Hence, the restoration of the value of those shares back into the appellant's asset pool was a critical part of complying with the Mareva injunction, given that the appellant had disposed of those shares in breach of the terms of the Mareva injunction. Such restoration was all the more critical as one of the respondent's claims against the appellant in the Suit was the Share Price claim for the sum of US$55.56m in respect of the sale of the respondent's 100% shareholding in Shanghai Suntech to the appellant. As such, the preservation of the appellant's shares in Shanghai Suntech as part of its assets was a key function of the Mareva injunction (which was to preserve the appellant's assets up to the total amount claimed in the Suit).

65 It would therefore make nonsense of the Mareva injunction in this case, and contempt proceedings in civil litigation in general, if the appellant need not restore the value of its shares in Shanghai Suntech to its asset pool just because it had already been fined S$100,000 and ordered to pay security of S$100,000 to secure its compliance with the Mareva injunction. In other words, if we were to accept the appellant's submissions, then the only consequence of the appellant dissipating an asset potentially worth US$55.56m in breach of the Mareva injunction would be an order that it pay a total of only S$200,000 in the form of a disproportionately low fine and security for its compliance with the said injunction. If this were correct, then Mareva injunctions as a tool to protect the potential fruits of litigation would be rendered useless. Litigants would find

Version No 1: 27 Oct 2020 (22:41 hrs)

it cheaper to breach a Mareva injunction and be found to be in contempt of court for doing so than to comply with the injunction.

66 Therefore, the fact that the appellant, as a result of being found to be in contempt of court for breaching the Mareva injunction, was ordered under the Contempt Order to pay a fine of S$100,000 and to pay into court security of S$100,000 to secure its compliance with the Mareva injunction did not in any way absolve it from its obligation to comply with the Mareva injunction. As the appellant had been found in the committal proceedings below to have breached the Mareva injunction by (among other things) dissipating its shares in Shanghai Suntech, which decision was not appealed against (see [35] above), it was incumbent on the appellant to comply with the Mareva injunction by restoring the value of those shares back into its asset pool.

No attempts to comply with the Mareva injunction

67 Third, and proceeding from the second point above, we found that the appellant made no attempts to comply with the Mareva injunction by restoring the value of its shares in Shanghai Suntech to its asset pool. The appellant also did not provide any explanation for its failure to do so.

68 We found that the appellant had no reason *not* to restore the value of its shares in Shanghai Suntech to its asset pool after its disposal of those shares in breach of the Mareva injunction. This was because the appellant or the ultimate controller of the appellant had the ability to do so and to thereby undo the breach of the Mareva injunction. We came to this conclusion because of the group structure of the entities which own Shanghai Suntech. We have reproduced a diagram of this group structure at **Annex A** to these written grounds.

Version No 1: 27 Oct 2020 (22:41 hrs)

69 The relationship amongst the relevant entities referred to in the preceding paragraph was set out by the respondent in YKJ's Affidavit in SUM 74. The appellant did not deny this relationship. In summary, Bai Yun, a director of the appellant, is an officer of Asia Pacific (China) Investment Management Co Ltd ("APCIM"). One Sheng Ping, who was appointed a director of Shanghai Suntech after the appellant sold its shares in Shanghai Suntech to Shanghai Shihao and Zhenjiang Rietech, was also the executive director, general manager and legal representative of APCIM at the material time. Sheng Ping was, in addition, the supervisor of Shanghai Shihao, the ultimate owner of Shanghai Suntech. APCIM, in turn, was wholly owned by Asia Pacific Resources Development Investment Ltd, which was controlled by Zheng Jianming. In the circumstances, we found it likely that the appellant and Shanghai Suntech were ultimately controlled by Zheng Jianming. Zheng Jianming therefore could have restored the value of the appellant's shares in Shanghai Suntech to the appellant's asset pool, but this was not in fact done.

70 Instead, what transpired during the course of SUM 58 was the complete opposite, inasmuch as Shanghai Shihao and Zhenjiang Rietech subsequently sold their shares in Shanghai Suntech to two other companies. This occurred about two weeks after the second hearing of SUM 58 on 31 May 2019. It is unclear whether the new owners of Shanghai Suntech are related to Zheng Jianming. Consistent with the appellant's cavalier attitude towards the Mareva injunction, the appellant saw fit not to update this court on this development. It was the respondent who brought this development to this court's attention in YKJ's Affidavit in SUM 74. In so far as the appellant's failure to disclose this development in BY's 2nd Affidavit, which was filed on 21 June 2019, was concerned, Bai Yun only explained that the appellant had no control over Shanghai Shihao and Zhenjiang Rietech, and so had no knowledge of their

Version No 1: 27 Oct 2020 (22:41 hrs)

disposal of their shares in Shanghai Suntech. Given the relationship between Bai Yun and Zheng Jianming, we found Bai Yun's explanation to be not only lacking in credibility, but also merely a convenient excuse by Bai Yun to feign ignorance and distance himself from his failure to be forthcoming in disclosing relevant and material information to this court.

71 In so far as the value of the appellant's shares in Shanghai Suntech, which the appellant was required to restore to its asset pool in order to comply with the Mareva injunction, was concerned, the appellant argued that there was little or no net value in its subsidiaries (including Shanghai Suntech while it was still a subsidiary of the appellant) to begin with, and the respondent had not been able to point to any significant value that could properly be said to have been lost as a result of the appellant's disposal of its shares in Shanghai Suntech.

72 We rejected the appellant's argument, which we found to be nothing more than a red herring. Regardless of what the value of Shanghai Suntech and, thus, the appellant's shares in Shanghai Suntech was, the appellant had been under a continuing obligation since 4 September 2014, the date on which the Mareva injunction was imposed, *not* to dispose of any of its assets, as stated in the Mareva injunction. Having already breached the Mareva injunction by disposing of its shares in Shanghai Suntech, the appellant now had to restore that asset or its equivalent in value to its asset pool. The onus was not on the respondent to now scramble and find evidence to ascertain the value that the appellant had lost as a result of its disposal of its shares in Shanghai Suntech in breach of the Mareva injunction, in order that the appellant would be obliged to restore that value to its asset pool. Instead, the appellant's obligation to restore the value of its shares in Shanghai Suntech to its asset pool was one that was independent of any action on the part of the respondent.

Version No 1: 27 Oct 2020 (22:41 hrs)

73 In this regard, we found on the evidence that the appellant had all the information on Shanghai Suntech that was needed in order to provide an accurate valuation of the company and, in turn, of its shares in the company. We based this finding on three factors. First, to justify the sale of its shares in Shanghai Suntech, the appellant, in BY's 17th Affidavit filed in the committal proceedings below and BY's 2nd Affidavit filed in SUM 58, provided Shanghai Suntech's balance sheets and profit statements as at 30 September 2018 to support its argument that Shanghai Suntech was making losses. Second, the appellant attested in these two affidavits that as at September 2018, Shanghai Suntech had some 1,200 employees and fixed assets worth up to RMB879,087,566.72, although those assets were heavily encumbered (see [55] above). This showed that the appellant did have information that was pertinent to the value of Shanghai Suntech and, in turn, of its shares in Shanghai Suntech. Third, and in any event, the appellant, being the sole shareholder of Shanghai Suntech in September 2018 before it disposed of its shares in Shanghai Suntech, was in the best position to conduct a proper valuation of Shanghai Suntech and, in turn, of its shares in Shanghai Suntech. This, however, was not done. Instead, what was clear on the evidence was that the appellant did *not* provide any evidence that a formal valuation of Shanghai Suntech and, in turn, of its shares in Shanghai Suntech was conducted before it proceeded to sell those shares to Shanghai Shihao and Zhenjiang Rietech for a meagre RMB2. There was, in our view, no basis for the appellant's shares in Shanghai Suntech to be valued at a mere RMB2. As we noted earlier at [59] above, the appellant also did not furnish any board papers relating to its decision to sell its shares in Shanghai Suntech; nor did it provide any background papers or other credible evidence showing (as it alleged) the urgent need to dispose of those shares in September 2018 due to Shanghai Suntech's precarious financial situation.

Version No 1: 27 Oct 2020 (22:41 hrs)

74 In the circumstances, the appellant's argument that Shanghai Suntech and, in turn, its shares in Shanghai Suntech had little or no net value was without basis since it was not supported by any formal valuation of Shanghai Suntech and of the appellant's shares in Shanghai Suntech. As we also noted above (at [72]), it also did not lie in the appellant's mouth to argue that the respondent should be the party responsible for pointing to any positive value which had been lost as a result of the appellant's disposal of its shares in Shanghai Suntech.

The appellant's failure to comply with its disclosure obligations

75 The obligation on the appellant to disclose its assets as well as their value, location and details was a necessary element of the Mareva injunction because it made possible the ability to monitor the appellant's dealings with the assets frozen under the said injunction.

76 The Mareva injunction therefore required the appellant to inform the respondent in writing of: (a) all of its assets, whether in or outside Singapore, giving the value, location and details of all such assets (in particular, the value, location and details of *all* of the appellant's subsidiaries); and (b) the steps (if any) that the appellant and its subsidiaries had taken in transferring, disposing of or dealing with the appellant's assets and the proceeds or profits/losses (if any) derived from such transfer, disposal or dealing (see [20(b)]–[20(c)] above).

77 The appellant was then required to confirm the aforesaid information in an *affidavit sworn or affirmed*, which had to be served on the respondent's solicitors within 21 days after the date of service of the Mareva injunction on the appellant (see [20(d)] above).

Version No 1: 27 Oct 2020 (22:41 hrs)

78 However, the appellant failed to file the said disclosure of assets affidavit despite numerous reminders by the respondent for it to do so. It was not until 21 June 2019, during the second adjournment of SUM 58, that the appellant affirmed, by way of BY's 2nd Affidavit in SUM 58, an affidavit of all of its assets, but even so, it did not provide any up-to-date details of the value of those assets. By then, it was already more than four years since the Mareva injunction was ordered.

79 We found that the appellant's explanation for its failure to provide any disclosure of its assets prior to the disclosure made in BY's 2nd Affidavit in SUM 58 was evidence of its cynical attitude towards the court's orders. We also found that, in any event, the asset disclosure purportedly made by the appellant in that affidavit did not comply with the purpose and spirit of the Mareva injunction. We will deal with the former finding first.

Numerous reminders given

80 First, as already mentioned, the appellant had been reminded numerous times by the respondent to file its disclosure of assets affidavit pursuant to the Mareva injunction. On 5 September 2014, the day after the Mareva injunction was issued, the respondent extracted the Mareva injunction, and on 8 September 2014, it served the Mareva injunction personally on the appellant and the appellant's solicitors.

81 Following the issuance of the Judgment in the Suit on 5 July 2018, the respondent again took steps to notify the appellant of its obligations under the Mareva injunction. On 17 July 2018, the respondent's solicitors wrote to the appellant's solicitors requesting the appellant to pay the judgment sum of US$197,501,785 either to the respondent or into court. In the same letter, the

Version No 1: 27 Oct 2020 (22:41 hrs)

respondent's solicitors reminded the appellant to comply with the Mareva injunction, in particular, to file its disclosure of assets affidavit. The respondent sent numerous reminders to the appellant for a substantive reply. It was only on 8 August 2018 that the appellant replied substantively to the respondent's letter. In its letter of 8 August 2018, the appellant informed the respondent's solicitors that it was still in the process of collating the information for its disclosure of assets affidavit. This was despite the fact that the appellant was by then close to *four years* late in filing the said affidavit.

82 Finally, after the appellant was found to be in contempt of court for, *inter alia*, failing to file its disclosure of assets affidavit, the respondent served the unsealed copies of the Contempt Order on the appellant, the appellant's solicitors and the appellant's Singapore director. The respondent also wrote to the appellant asking it to comply with the Contempt Order.

83 Despite the above numerous reminders, the appellant did not file its disclosure of assets affidavit.

Explanation for long delay in providing disclosure of assets not credible

84 Second, the appellant's explanation for its failure to provide any disclosure of its assets until the filing of BY's 2nd Affidavit in SUM 58 on 21 June 2019 was, in our view, not credible. In that affidavit, Bai Yun claimed that the appellant was unable to provide the necessary information on its subsidiaries because it did not have any information on them. Bai Yun relied on the fact that Wuxi Suntech was the entity in charge of collating the financial information and records of the SPH Group. As such, when Wuxi Suntech transferred its ownership of the appellant to Fast Fame in 2014 and the current

Version No 1: 27 Oct 2020 (22:41 hrs)

management of the appellant was installed (see [12] above), the appellant did not have access to all the financial information relating to its subsidiaries.

85 Bai Yun then explained that since Wuxi Suntech was a third party that was not involved in these proceedings, the appellant had no power to compel Wuxi Suntech to give it any information. As a result, the appellant should not be faulted for not providing any of the information on its subsidiaries that was required of it pursuant to the Mareva injunction. We note that this was also the explanation in BY's 17th Affidavit in the committal proceedings below for the appellant's failure to provide information on its assets.

86 We found that the appellant's explanation was not credible because the appellant provided no evidence as to whether it had in fact approached Wuxi Suntech *immediately after* the Mareva injunction was ordered on 4 September 2014 to obtain the necessary information to meet its disclosure obligations under the Mareva injunction. In addition, the appellant provided no evidence to show that it had made concerted efforts to obtain the necessary information from Wuxi Suntech *after* the numerous reminders by the respondent for it to file its disclosure of assets affidavit. Furthermore, the appellant did not provide any evidence to show (as it claimed) that Wuxi Suntech had been uncooperative in any way.

87 On a closely related note, given the relationship between Bai Yun and the controller of Wuxi Suntech, Zheng Jianming (whom we have found was also likely to have been the ultimate controller of the appellant, among other companies, at the material time), we did not find the appellant's alleged inability to obtain the relevant information from Wuxi Suntech credible (see above at [69]–[70] and Annex A of these written grounds).

Version No 1: 27 Oct 2020 (22:41 hrs)

Disclosure made not sufficient, and in fact disclosed further breaches of the Mareva injunction

88 In BY's 2nd Affidavit in SUM 58, which was filed during the second adjournment of this summons, the appellant purported to give disclosure of its assets, undoubtedly hoping that this would count towards its compliance with its disclosure obligations under the Mareva injunction. In that affidavit, Bai Yun disclosed all of the appellant's assets, which consisted of 16 subsidiaries that the appellant controlled either directly or indirectly (excluding Shanghai Suntech, which the appellant had by then already disposed of in breach of the Mareva injunction). Of these 16 subsidiaries, the appellant claimed that seven were active going concerns ("Active Subsidiaries"), while the remaining nine were inactive ("Inactive Subsidiaries"). The Inactive Subsidiaries included Suntech R&D and Rietech Investments, which the appellant had allowed to be de-registered (in the case of Suntech R&D) and struck off (in the case of Rietech Investments) in breach of the Mareva injunction (see [32] above). This (among other factors) had led the court below to find the appellant to be in contempt of court.

89 Bai Yun then disclosed that in addition to Suntech R&D and Rietech Investments, all of the appellant's other Inactive Subsidiaries had also been struck off. What was pertinent was that the Inactive Subsidiaries had all been struck off *after* the Mareva injunction was imposed on the appellant on 4 September 2014, but the appellant took no steps to inform the court or the respondent of this. This, in and of itself, constituted a clear breach of the Mareva injunction.

90 In so far as the financial information on all of the appellant's subsidiaries was concerned, Bai Yun relied on the 2014 financial records of these

Version No 1: 27 Oct 2020 (22:41 hrs)

companies, which he claimed he had managed to obtain from Wuxi Suntech only after the seecond hearing of SUM 58 on 31 May 2019. The reason given for the appellant's inability to provide the latest financial information on its subsidiaries was the same as that given for its inability to disclose its assets earlier, which was that Wuxi Suntech possessed all the relevant information and that Wuxi Suntech was a third party beyond the control of the appellant (see above at [84]–[85]). As we have already explained above (at [86]–[87]), we found that this explanation was not at all credible.

91 In so far as the appellant's failure to provide any updated financial information on its Inactive Subsidiaries was concerned, Bai Yun presented a *fait accompli* by stating that since those subsidiaries had all been struck off, the appellant could not now obtain any information on them.

92 From the state of the evidence presented, which we have summarised above, we found that the asset disclosure provided by the appellant in BY's 2nd Affidavit in SUM 58 did not comply with its disclosure obligations under the Mareva injunction. It will be recalled that under the Mareva injunction, the appellant was to inform the respondent in writing of (among other things) all of its assets, whether in or outside Singapore, giving the value, location and details of all such assets. This, the appellant failed to do. The appellant did not provide the value of its subsidiaries. The 2014 financial information disclosed in BY's 2nd Affidavit in SUM 58 was insufficient to meet the requirements under the Mareva injunction because it was outdated. Indeed, given the fact that the appellant currently still controls the Active Subsidiaries, it would be reasonable to expect the appellant to have obtained and provided the latest financial information on those subsidiaries when it filed

Version No 1: 27 Oct 2020 (22:41 hrs)

BY's 2nd Affidavit in SUM 58. No explanation was given by the appellant as to why it failed to do so.

93 The appellant also asserted in BY's 17th Affidavit in the committal proceedings below that on 25 September 2014, it had sent a letter to the respondent's then solicitors with a list of documents and copies of certain documents which it claimed it had been asked to provide pursuant to the Mareva injunction. Annexed to this letter were the relevant corporate documents of 14 of its subsidiaries, including some documents in Korean and Chinese which were not translated. Bai Yun argued that as the respondent neither requested an affidavit in respect of this information nor made any complaints about it, the appellant had not breached the terms of the Mareva injunction.

94 We rejected this argument because it was clear from the plain language of the orders in the Mareva injunction that the appellant was required to affirm the aforementioned information by way of an affidavit. The appellant clearly did not do so. In any event, the information disclosed by the appellant in its letter of 25 September 2014 did not include the value, location and details of the relevant assets. The corporate documents annexed to that letter were merely documents relating to the incorporation of 14 of the appellant's subsidiaries. This was clearly insufficient to comply with the appellant's disclosure obligations under the Mareva injunction.

Conclusion

95 For the foregoing reasons, we found that the appellant had no intention of complying with the Mareva injunction in relation to both its disposal of its shares in Shanghai Suntech and its disclosure obligations. For these reasons alone, we found that the appellant's contumelious breaches of the Mareva

Version No 1: 27 Oct 2020 (22:41 hrs)

injunction were sufficient to indicate to us that it had brought its appeal in CA 109/2018 for reasons other than to seek this court's relief.

96 We would venture further to state that we were minded to agree with the respondent that the appellant, by filing a notice of appeal against the Judgment in the Suit, was hoping to buy time so that in the event that its appeal were dismissed, Shanghai Suntech would have been put beyond the reach of the respondent's attempts to enforce the Judgment. As the respondent rightly put it, Shanghai Suntech, being a going concern, was one of the crown jewels of the SPH Group. By filing a notice of appeal one day after the Judgment was issued, the appellant knew that the respondent's ability to take enforcement action against it would be seriously curtailed. After dissipating the appellant's shares in Shanghai Suntech less than a month after the appellant consented to extend the Mareva injunction, and despite being aware of the concerns expressed by this court at the hearing of SUM 58 on 31 May 2019 as to the appellant's disposal of its shares in Shanghai Suntech, the ultimate controller of the appellant and Shanghai Suntech decided to *further* transfer the ownership of Shanghai Suntech to new owners, thus placing the company even further out of the respondent's reach for the purposes of enforcement. All these reinforced our finding that CA 109/2018 was brought for an ulterior motive.

97 These grounds were sufficient for us to strike out CA 109/2018 as an abuse of the court's process. However, since the appellant argued that it was not aware of its obligation to restore the value of its shares in Shanghai Suntech to its asset pool (and we dealt with the legal basis for rejecting this argument above at [62]–[66]), we considered (as explained at [3] and [45] above) that it would be in the interests of justice and fairness to give the appellant the benefit of the doubt and, therefore, one final chance to comply with the Mareva injunction.

Version No 1: 27 Oct 2020 (22:41 hrs)

98 In the circumstances, at the conclusion of the hearing on 17 July 2019, we ordered that unless the appellant paid into court the value of its shares in Shanghai Suntech, which we took to be US$55.56m, by 7 August 2019, CA 109/2018 would be struck out as an abuse of the process of the court. The sum of US$55.56m was derived from the purchase price consideration claimed by the respondent for the sale of its shares in Shanghai Suntech to the appellant pursuant to the share transfer agreement dated 8 August 2008 (see the Share Price claim at [16] above).

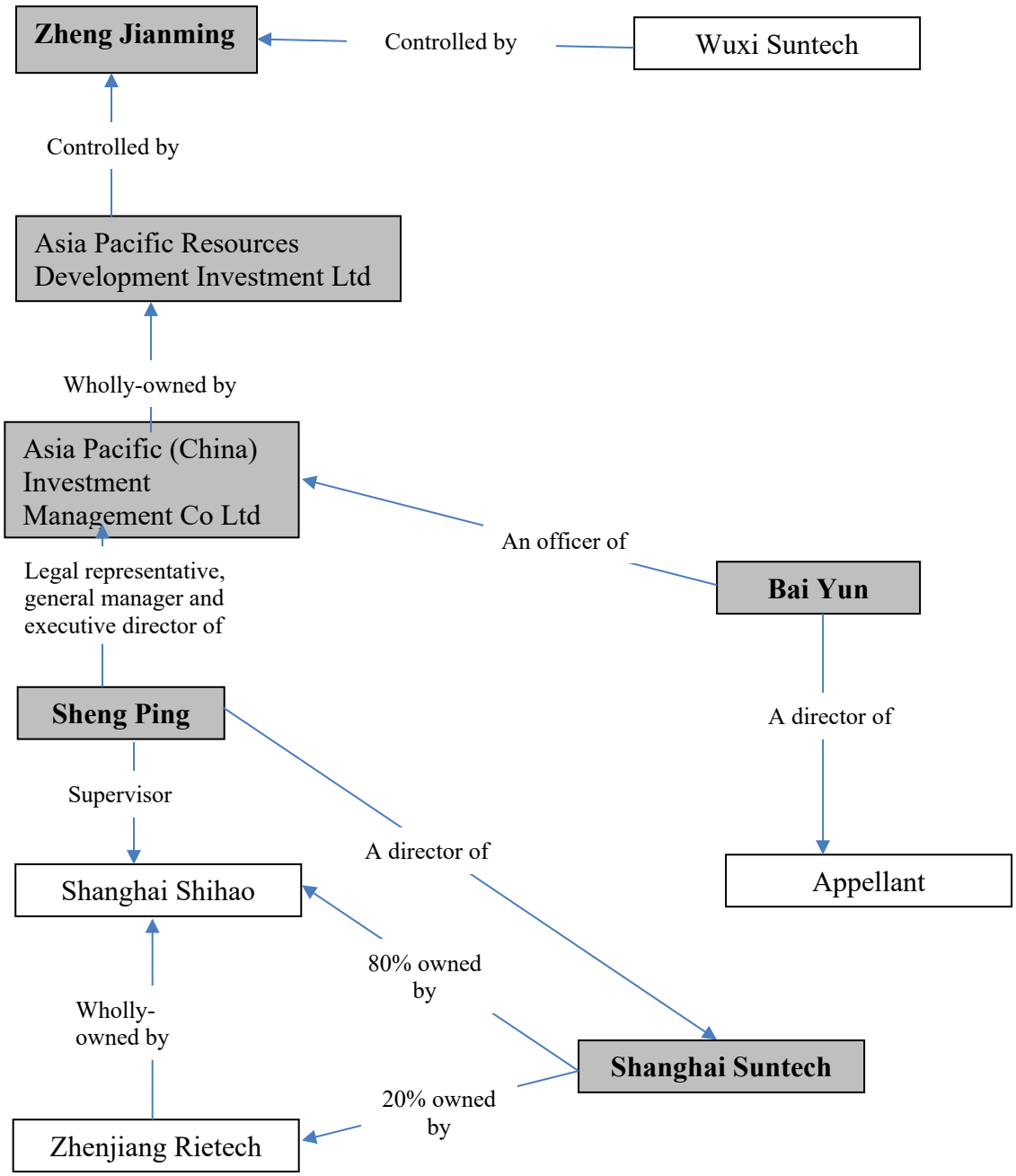
99 In closing, we note that the appellant failed to pay the requisite sum into court by the stipulated deadline of 7 August 2019. Therefore, pursuant to the unless order we made on 17 July 2019, CA 109/2018 was automatically struck out as an abuse of the process of the court. We then ordered the parties to address this court on the issue of the costs of all the proceedings before it.

Sundaresh Menon Chief Justice	Andrew Phang Boon Leong Judge of Appeal	Chao Hick Tin Senior Judge

Danny Ong Tun Wei, Yam Wern-Jhien and Danitza Hon Cai Xia (Rajah & Tann Singapore LLP) for the appellant;
Balakrishnan Ashok Kumar and Leong Ji Mun Gregory (BlackOak LLC) for the respondent.

Version No 1: 27 Oct 2020 (22:41 hrs)

Annex A



Version No 1: 27 Oct 2020 (22:41 hrs)