IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 18

Suit No 200 of 2016 (Summons Nos 4280 of 2019 and 5557 of 2019)

Between

(1) Sun Electric Pte Ltd
(2) Sun Electric Power Pte Ltd

… Plaintiffs

And

(1) Menrva Solutions Pte Ltd
(2) Chan Lap Fung Bernard

… Defendants

And Between

Menrva Solutions Pte Ltd

… Plaintiff in Counterclaim

And

(1) Sun Electric Pte Ltd
(2) Sun Electric (Singapore) Pte Ltd
(3) Sun Electric Energy Assets Pte Ltd
(4) Sun Electric Digital Stream Ltd
(5) Matthew Peloso

… Defendants in Counterclaim

GROUNDS OF DECISION

[Civil Procedure] — [Mareva injunctions] — [Disclosure orders]

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v
Menrva Solutions Pte Ltd and another

[2020] SGHC 18

High Court — Suit No 200 of 2016 (Summons Nos 4280 of 2019 and 5557 of 2019)
Dedar Singh Gill JC
12, 16, 24 September, 22 October, 5, 17 December 2019

22 January 2020

Dedar Singh Gill JC:

1 This was an application by Menrva Solutions Pte Ltd ("Menrva") and Mr Chan Lap Fung Bernard ("Mr Chan") (collectively, "the applicants") who sought, among other things, a Mareva injunction against Sun Electric Power Pte Ltd ("SEPPL"), Sun Electric Pte Ltd ("SEPL"), Sun Electric (Singapore) Pte Ltd ("SESPL"), Sun Electric Energy Assets Pte Ltd ("SEEAPL"), Sun Electric Digital Stream Ltd ("SEDSL") and Mr Matthew Peloso ("Mr Peloso") (collectively, "the respondents"), as well as various ancillary disclosure orders against the same parties.[1] The applicants had found out about the impending sale of a majority stake in SEEAPL to an as-yet unidentified foreign investor and believed this to be a potential act of dissipation.

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[1] Order of Court dated 22 September 2019.

2 This matter was heard over four separate hearings. At the final hearing on 22 October 2019, I granted the applicants the disclosure orders ("the Disclosure Orders"). I now give my grounds of decision. The grounds primarily concern disclosure orders that are granted ancillary to a Mareva injunction. I also set out my reasons for dismissing the respondents' application for leave to appeal and a stay of execution of the Disclosure Orders.

Facts

The parties

3 SEPL, SEPPL, SEEAPL, SEDSL and SESPL are part of the Sun Electric Group ("the SE Group").[2] These companies engage in, *inter alia*, business development, marketing for rooftop solar systems and supplies of clean electrical power. SEPPL was incorporated on 17 September 2013.[3] Both SEPL and SEEAPL were incorporated in 2014.[4] In 2015, SESPL was founded as SEPL's subsidiary.[5] The last corporate entity, SEDSL, is a company incorporated in the British Virgin Islands ("BVI").[6] SEDSL was the only entity unrepresented in the present proceedings.

4 Mr Peloso is the founder of the SE Group.[7] At the time of the dispute, he was the sole director of SEPL, SESPL, SEPPL, and SEEAPL.[8]

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2 Mr Peloso's 4th Affidavit, paras 17 to 31.

3 Mr Peloso's 4th Affidavit, para 22.

4 Mr Peloso's 4th Affidavit, paras 25 and 30.

5 Mr Peloso's 4th Affidavit, para 31.

6 Mr Chan's 15th Affidavit, para 10.

7 Mr Peloso's 4th Affidavit, para 22.

8 Mr Chan's 15th Affidavit, para 11.

The underlying claim

5 Both SEPL and SEPPL were the plaintiffs in Suit No 200 of 2016. This suit involved a claim against the applicants for breach of a consultancy agreement ("the consultancy agreement") and breach of various duties of care.[9] Menrva, one of the two defendants in Suit 200 of 2016, counterclaimed against SEPL for fees owed under the consultancy agreement. Vinodh Coomaraswamy J's decision is reported in *Sun Electric Pte Ltd and another v Menrva Solutions Pte Ltd and another* [2018] SGHC 264 ("the liability judgment").[10]

6 The facts giving rise to the underlying claims and counterclaim in Suit 200 of 2016 have been set out extensively at [1]–[26] of the liability judgment. I will not repeat them here. It suffices to note that the Energy Market Authority of Singapore ("EMA") had established the Enhanced Forward Sales Contract Scheme ("the Scheme") to facilitate participation in Singapore's electric futures market. SEPL was accepted as a participant in the Scheme.[11] SEPL later engaged Menrva as a consultant pursuant to the consultancy agreement.

7 Under the consultancy agreement, Menrva was obliged to provide Mr Chan's services to SEPL (liability judgment at [1]). Two of the legal issues were (a) whether Menrva had breached the consultancy agreement and (b) whether SEPL was contractually liable to pay Menrva certain fees under the same agreement (liability judgment at [27]). Coomaraswamy J held largely in favour of the defendants to the claim, who are also the applicants in the present

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9 Mr Chan's 15th Affidavit, para 19.

10 Mr Chan's 15th Affidavit; CLFB-12 Annex C.

11 Mr Chan's 15th Affidavit, para 15.

case. He held for Menrva in the counterclaim, leaving damages to be assessed (at [153] and [154]).

8 SEPL and SEPPL appealed against the liability judgment. This is reported in *Sun Electric Pte Ltd and another v Menrva Solutions Pte Ltd and another* [2019] SGCA 51. The appeal was dismissed with SEPL and SEPPL ordered to pay costs in the sum of S$45,000. Meanwhile, the parties proceeded with the assessment of damages for Menrva's counterclaim.[12] The hearing of oral closing submissions was fixed on 30 September 2019.[13] Menrva had quantified its counterclaim at S$1,495,452.53 and interest at S$262,489.20. Both applicants also filed a Bill of Costs against SEPL and demanded costs amounting to S$622,771.81.[14] However, these sums were disputed by SEPL and SEPPL.

9 Although the respondents have not sought leave to appeal against my decision to grant the applicants the Mareva injunction on 24 September 2019, I set out the matters that transpired during all four hearings. These also encompass my reasons for granting the Mareva injunction.

Judicial Management proceedings

10 It must be highlighted that one of the respondents, SEPPL, the second plaintiff in the suit, had become the subject of judicial management proceedings ("JM proceedings") (see Originating Summon 1060 of 2019).[15] This was made

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12 Mr Chan's 15th Affidavit, para 23; CLFB-12 Annex D.

13 Mr Chan's 15th Affidavit, para 23.

14 Mr Chan's 15th Affidavit, para 25.

15 Mr Chan's 15th Affidavit, para 11(d).

known to the applicants on 21 August 2019 through the disclosure of Mr Peloso's affidavit in support of the JM proceedings.[16] Mr Peloso applied for SEPPL to be placed under judicial management on two grounds. First, that SEPPL was unable to pay its debts. Second, that the interests of SEPPL's shareholders would be better served through the winding down of its operations.

11 Based on Mr Peloso's affidavit, SEPPL's issued share capital was S$45,605,994. As of the date of Mr Peloso's affidavit, SEPPL's cash on hand amounted to a meagre $93,599.64. In his affidavit, Mr Peloso claimed that SEPPL's major creditors were SESPL and SEPL, various customers of SEPPL, Wong Partnership LLP, and an entity known as Kashish.[17] Kashish was listed as SEPPL's largest creditor with an outstanding debt of S$927,594.61. The role of Kashish in the present proceedings was significant and I will explain the relevance of this in greater detail below. As of the date of the final hearing on 22 October 2019, judicial managers had not yet been appointed.[18] The applicants had stressed that judicial management applications ("JM applications") were not always successful and that in the meantime, SEPPL should be restrained from dissipating its assets.[19]

The 12 September hearing

12 Before the 12 September 2019 hearing, Andrew Ang SJ had granted a Mareva injunction and various disclosure orders on 30 August 2019 on an *ex parte* basis. On 4 September 2019, Tan Lee Meng SJ ordered that compliance

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16 Aide Memoire for the Plaintiffs and the 2nd, 3rd and 5th Defendants in the Counterclaim, para 5.

17 Mr Peloso's 1st Affidavit, para 25.

18 Minute Sheet dated 12 September 2019.

19 Applicant's Skeletal Submissions, p 56.

with the disclosure orders be put on hold until the disposal of the *inter partes* hearing.

13 At the *inter partes* hearing on 12 September 2019, the applicants sought, *inter alia*, the following orders:[20]

(a) an order restraining the respondents from disposing of their assets in Singapore and any jurisdiction outside Singapore up to the value of S$2,512,817.80;

(b) further and in the alternative, an order restraining SEPPL from disposing of its assets in Singapore and any jurisdiction outside Singapore up to the value of S$709,263.81; and

(c) various ancillary disclosure orders.

14 On the basis of the evidence before me, I was inclined to grant both the Mareva injunction and Disclosure Orders at the first hearing on 12 September 2019. However, for reasons which will be made clear, both the Mareva injunction and the Disclosure Orders were not granted that day but only at the subsequent hearings held on 24 September 2019 and 22 October 2019.

15 To obtain Mareva relief against a party to the suit, a plaintiff must establish a good arguable case on the merits and a real risk that the defendant will dissipate its assets to frustrate the enforcement of an anticipated judgment of the court (*Bouvier, Yves Charles Edgar and another v Accent Delight International Ltd and another and another appeal* [2015] 5 SLR 558 ("*Bouvier*") at [36]). The issue of there being a "good arguable case" did not arise because

[20] Summons for Injunction (Amendment No.1) dated 30 August 2019.

the plaintiff in the counterclaim, Menrva, had successfully established its counterclaim against SEPL, with judgment having been entered.

16 In an application for a Mareva injunction against a third party to the suit, the applicant must show a "good arguable" case that a third party is holding assets that belong to the defendant (*Teo Siew Har v Lee Kuan Yew* [1999] 3 SLR(R) 410 ("*Teo Siew Har*") at [19]). The Court of Appeal ("CA") in *Bouvier* affirmed the court's jurisdiction to include in a Mareva court order assets belonging to a third party on the basis that the assets are "in truth the assets of the defendant" (at [124]). I was mindful that the respondents, save for SEPL and SEPPL, were third parties in Suit No 200 of 2016. I was equally cognisant that each respondent was a separate legal personality. In arriving at my decision to grant Mareva relief against the respondents, I did not rely on the single economic entity doctrine, which has been rejected by the CA in *Goh Chan Peng and others v Beyonics Technology Ltd and another and another appeal* [2017] 2 SLR 592 at [70]–[75].

17 Applying the test in *Teo Siew Har*, I was of the view that the assets of the third parties were, on a good arguable standard, the assets of the defendant in the counterclaim, SEPL. It is not necessary for me to elaborate further as the respondents did not seek leave to appeal against this point (see [9] above).

18 The parties' main point of contention at the four hearings was the existence of a "real risk" of asset dissipation.

19 The evidence cited by the applicants included the following matters, which I accepted as showing a "real risk" of dissipation. First, there appeared to have been a breach of an existing Order of Court, *ie*, an interim injunction

obtained by RCMA Asia Pte Ltd ("RCMA") against SEPPL ("the RCMA Injunction", explained further at [21] below), through SEPPL's withdrawal or transfer of large sums of money out of a bank account it held. Second, SEPL had sold several of its patents for a sum of S$80,000. SEPL was then made the exclusive licensee of those patents. The terms of the licenses were not shown to court. Third, there was a large depletion of assets from SEPPL, the company that is now the subject of JM proceedings, to the tune of $16.8 million.

The RCMA Injunction

20 As part of the same Scheme established by the EMA, SEPPL had entered into an agreement with RCMA.[21] Pursuant to this, RCMA agreed to perform certain obligations undertaken by SEPPL. SEPPL was to receive 70% of the payouts made by the EMA and RCMA the remaining 30%. Collectively, these were known as the "FSC Payments".[22]

21 A dispute arose between RCMA and SEPPL.[23] RCMA commenced Suit 191 of 2018 to recover its share of the FSC Payments under the agreement. Subsequently, on 26 February 2018, RCMA obtained the RCMA injunction on the following terms:[24]

> … an interim prohibitory injunction be granted, pending disposal of the *inter partes* hearing, to restrain the Defendant, its directors, officers, employees and/or agents in any way disposing, dealing with or diminishing the Plaintiff's 70% share of FSC Payments received by Defendant in respect of market making trades taken on by Plaintiff to 26 February 2018.

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21 Mr Chan's 15th Affidavit, para 35.

22 Mr Peloso's 4th Affidavit, para 38.

23 Mr Chan's 15th Affidavit, para 33.

24 Mr Chan's 15th Affidavit, para 34; Mr Peloso's 2nd JM Affidavit, pp 17–18.

22 The applicants contended that there had been a blatant disregard of the RCMA injunction. This was evident from various transfers out of SEPPL's OCBC Account ("the OCBC Account") made in direct contravention of the terms of the RCMA Injunction.[25] This in turn evidenced a "real risk" of dissipation of assets.

23 It is undisputed that there was initially a certain sum of money in the OCBC Account. The OCBC Account was a joint account specifically opened to receive money under the FSC Scheme.[26] Pursuant to the terms of the agreement between RCMA and SEPPL, both parties were joint signatories to the OCBC Account.[27]

24 After the RCMA Injunction was imposed by the court, there were at least *three* transfers or withdrawals from the OCBC Account for various purposes. I highlight two of the more significant ones, which demonstrated a "real risk" of dissipation. The first was made on 24 September 2018, where a sum of S$1,500,000 was withdrawn from the OCBC Account. Mr Peloso attempted to explain this withdrawal in the following manner:[28]

> It is also incorrect to characterise the withdrawal on 24 September 2018 as having been done "*in blatant disregard*" of the [RCMA Injunction]. I fully understand the significance of an order of court, and as SEPPL's director, I had always intended to procure SEPPL to comply with the injunction ordered by the Court. However, as explained in MP's JM Affidavit at [48(k)], SEEAPL urgently required monies to pay a contractor, Sunpower Systems Sarl for solar modules to be installed on its rooftop projects (a copy of Sunpower System Sarl's invoice

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25 Mr Chan's 15th Affidavit, para 35.

26 Mr Peloso's 4th Affidavit, paras 77 and 78.

27 Mr Peloso's 4th Affidavit, para 78.

28 Mr Peloso's 4th Affidavit, para 87.

> dated 25 September 2018 for the sum of US$1,253,184.90 (*ie*, approximately S$1.5m) is exhibited hereto as **Tab 103** of **Exhibit MP-4**). Although SEEAPL had managed to secure the agreement of a third party funder to fund part of the costs in September 2018, it so happened that there was a delay in the remission of funds. In the event, the funds in SEPPL's OCBC Account were the only option available at the time and were used to pay for the solar modules in September 2018. ***While I understand now after having sought advice from my solicitors that I should have applied to court to seek a partial variation of the injunction, the withdrawal on 24 September 2018 was done purely out of desperation and immediately made up for once funds from the third party funder came through.***
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> [original emphasis in italics and bold; emphasis added in bold italics]

25 In other words, Mr Peloso was *aware* that the money should not have been withdrawn from the OCBC Account. He was conscious that removing the sum constituted a breach of the terms of the RCMA injunction. Still, he proceeded to withdraw the sum of money from the OCBC Account. Mr Peloso's justification for defying a clear court order (*ie*, the RCMA Injunction) was that SEEAPL "urgently required monies to pay a contractor" and that "the funds in SEPPL's OCBC Account were the only option available at the time".

26 Thereafter, sometime between 27 November 2018 to 17 December 2018, *money was again taken out of the OCBC Account, in apparent contravention of the RCMA Injunction*. This time, the entire sum of money in the OCBC Account was transferred to a DBS Account held by SEPPL ("the DBS account"). The sum amounted to approximately S$6 million.[29] This sum of money was subsequently garnished by an UAE entity, known as "Kashish", in highly suspicious circumstances.

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29 Mr Peloso's 4th Affidavit, para 107.

27 In January 2019, a mere one month after the sum was transferred from the OCBC Account to the DBS Account, Kashish commenced proceedings in Singapore against SEPPL for the sum of $6,995,755.78 in Suit 74 of 2019. The losses were allegedly incurred by SEPPL through trading under various contracts for differences ("CFDs") that SEPPL had entered into with Kashish from 2016 to 2018.[30]

28 As it turned out, after the commencement of the proceedings, SEPPL decided not to enter an appearance in Suit 74 of 2019. This was apparently done on the advice of its solicitors. Consequently, Kashish obtained default judgment for the sum of S$6,995,755.78.[31]

29 The evidence showed that Kashish had found out about this sum of money *through Mr Peloso himself*. This was by way of a letter sent by SEPPL through Mr Peloso on 3 December 2018. This letter was sent about one month *before* Kashish commenced proceedings against SEPPL.

30 The letter reads as follows:

> Please see attached the order of court. ***Please notice the injunction of moneys from our account. The money in the account cannot be moved due to the injunction order.***
>
> [emphasis added]

31 This letter was signed by Mr Peloso on behalf of SEPPL.[32] Just as with the earlier withdrawal on 24 September 2018, it was evident that Mr Peloso

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30 Mr Peloso's 1st Affidavit, para 51.

31 Mr Peloso's 1st Affidavit, para 53.

32 Mr Peloso's 1st Affidavit, p 91.

knew that "the money in the account [could not] be moved due to the injunction order".

32 Yet, as it later emerged, all of the money in the OCBC Account found its way into the hands of Kashish.

33 On 14 February 2019, about a month or so after the S$6 million was moved from the OCBC Account to the DBS Account, Kashish applied to garnish the DBS Account in HC/SUM 767/2019.[33] Kashish successfully obtained the garnishee order. A copy of the order was served on SEPPL on 21 February 2019.[34]

34 I found the manner in which Kashish obtained SEPPL's DBS Account details highly troubling. According to Mr Peloso, *he himself had informed Kashish of the DBS Bank Account number*. On 9 January 2019, Mr Peloso met with Mr Arpan Saha ("Mr Saha"), Kashish's Account Manager.[35] During this meeting, Mr Peloso claimed that Mr Saha had asked him for "proof of funds" that SEPPL could satisfy the default judgment. In response, Mr Peloso disclosed the DBS Account number and the fact that the account held approximately $6 million in funds.[36] It was not made clear to me *why* it was necessary for Mr Peloso to inform Mr Saha of the DBS Account number.

35 It was undisputed that the money that was removed from the OCBC Account to the DBS Account was not ultimately replaced by SEPPL. In other

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33 Mr Peloso's 1st Affidavit, para 55.

34 Mr Peloso's 1st Affidavit; Tab 9, Exhibit MP-1.

35 Mr Peloso's 4th Affidavit, para 107.

36 Mr Peloso's 4th Affidavit, para 107.

words, there was a net depletion of approximately S$6 million from the OCBC Account. This had been done despite Mr Peloso having stated in his letter to Kashish that "*the money in the account cannot be moved due to the [RCMA Injunction]*".

36 Mr Peloso's explanation for the above events did not withstand scrutiny. He claimed that Kashish was a legitimate commercial entity. He cited the fact that Kashish's website listed it as a "wholly-owned subsidiary of a publicly listed company on the Bombay Stock Exchange" (a company known as "Kushal Ltd").[37] The relatively large losses suffered, totalling approximately S$6.9 million, was explained as having been incurred under several separate CFDs. The losses were also said to have been sustained over a period of 11 separate quarters.[38]

37 Despite Mr Peloso's explanation, there was no evidence on how or why SEPPL entered into a commercial relationship with Kashish, an UAE entity. Details of the CFDs were not provided. I was not given an explanation as to why SEPPL continued entering into new CFDs with Kashish despite continuously suffering from such large losses over several quarters. In my judgment, the lack of evidence was wholly unsatisfactory. Given the above circumstances, I was satisfied that there was a real risk of dissipation of assets.

Transfer of patents

38 About six months after the liability judgment was released, SEPL transferred eight of its 11 patents (or pending patent applications) to SEDSL, a

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37 Mr Peloso's 4th Affidavit, para 10(b).

38 Mr Peloso's 4th Affidavit, para 102.

BVI entity.[39] These patents were collectively sold by SEPL for S$80,000 and exclusively licensed back to entities in the SE Group. The respondents failed to produce the terms of these licenses. No explanation was furnished regarding why the patents were sold at this price. In this connection, it is worth noting that a much larger sum of *$1.2m* had been spent *registering* the patents (see below at [43]). I thus inferred that there was a real risk of dissipation.

S$16.8 million loss

39 The final point concerned the SE Group's losses of about S$16.8 million.

40 Mr Peloso claimed that SE Group entities earned approximately S$16.8 million in revenue from their share of FSC Payments under the Scheme.[40] It was unchallenged that the payments were received in SEPPL's OCBC Account.[41] The applicants submitted that there was no explanation as to how this large sum of money was used.[42]

41 Based on SEPPL's unaudited management accounts, its total cash and current assets, as at 31 July 2019, amounted to S$287,295.29, of which only S$93,599.64 was in the form of cash in bank accounts.[43] According to Mr Peloso, SEPPL's creditors included the following entities:[44]

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39 Mr Chan's 15th Affidavit, para 39.

40 Mr Peloso's 4th Affidavit, para 76; Mr Chan's 15th Affidavit, para 30; CLFB-12 Annex E.

41 Mr Peloso's 4th Affidavit, para 76.

42 Mr Chan's 15th Affidavit, para 31.

43 Mr Peloso's 1st Affidavit, para 23; Mr Chan's 15th Affidavit, para 31.

44 Mr Peloso's 1st Affidavit, para 25.

(a) Kashish, for the sum of $927,594.61;

(b) SESPL, for the sum of S$635,647.62;

(c) SEPL, for the sum of S$15,800.00;

(d) 40 customers of SEPPL, who had placed security deposits with SEPPL, for the total sum of $287,138.24 (the identities of the customers allegedly constituted commercially sensitive and confidential information and were therefore not disclosed); and

(e) WongPartnership LLP, for the sum of S$139,145.14.

42 I have expressed my disquiet as regards the Kashish matter. Apart from Kashish, I noted that SEPPL's major creditors were primarily related entities who were also parties to the present proceedings.

43 The respondents claimed that SEPPL's losses arose from the following matters. S$1.46 million had been used to pay for losses made on CFDs that Mr Chan had placed on behalf of SEPPL.[45] Of the remaining S$15.24 million, part of it had been used to pay off substantial expenses incurred by SEPPL in the ordinary course of business, while a large part of the sum had been channelled towards supporting the SE Group's capital-intensive projects.[46] For example, S$8,636,457 had been used to build photovoltaic systems. The other major expenses of the SE Group included nearly S$1.5m in legal costs, comprising the costs of the present litigation as well as Suit 1229 of 2016 involving Sunseap

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45 Mr Peloso's 4th Affidavit, para 79.

46 Mr Peloso's 4th Affidavit, para 79(b) and 79(c).

Group Pte Ltd. Another $1.2m in legal costs was incurred for registering patents.[47]

44 I was satisfied that the manner in which part of the $16.8 million had been spent gave rise to a real risk of dissipation.

45 There were several reasons for this.

46 First, there was very little documentary evidence supporting Mr Peloso's assertions on affidavit. The only supporting document was a redacted document titled "Independent Practitioner's Review". This, however, pertained to the affairs of *SEEAPL* and not *SEPPL* (*ie*, the party subject to the JM proceedings). The document showed that *SEEAPL* had incurred S$8,636,457 in costs for a "photovoltaic system",[48] as opposed to *SEPPL*, the party that had *received* the FSC Payments and had become the subject of JM proceedings. In relation to the other alleged debts, no documents were produced to evidence the losses allegedly made on the CFDs involving Mr Chan, or indeed any of the other expenses incurred by SEPPL.

47 Second, it was clear that a large amount of the expenses listed by Mr Peloso in his affidavit for SEPPL was incurred by *other entities* in the SE Group. However, there was a noticeable omission by Mr Peloso to mention any reason why the sums that were received by *SEPPL* in the OCBC Account ended up being used by *other entities* in the SE Group.

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47 Mr Peloso's 4th Affidavit, para 79(d).

48 Mr Peloso's 4th Affidavit, pp 322–323.

48 Third, while SEPPL claimed to have incurred almost S$1.5 million in legal costs, at least some of these costs were incurred for entities other than SEPPL. For instance, Suit 1229 of 2016 did not involve SEPPL. Further, although $1.2 million was allegedly incurred for the registration of patents, none of these registered patents were owned by SEPPL. Finally, it is worth mentioning that the FSC Payments were credited into SEPPL's OCBC Account and this was the *same account* jointly maintained with RCMA and the *same account* from which approximately S$6 million had been garnished by Kashish in highly suspicious circumstances. This too gave me reason to doubt Mr Peloso's version of events regarding the S$16.8 million.

Proposal for payment into court

49 As stated above, I was prepared to grant the Mareva injunction and the Disclosure Orders based on the evidence before me. However, the respondents' counsel, Ms Koh Swee Yen ("Ms Koh"), informed me of a potential deal with a foreign investor to acquire a controlling majority stake in SEEAPL.[49] A non-binding sheet had been signed and "definitive agreements" were to be signed by mid-September 2019. Final completion was supposed to take place by the end of September 2019.

50 I should state that the applicants had claimed that the impending sale of shares in SEEAPL was also evidence of a real risk of dissipation. In this respect, the applicants relied on, *inter alia*, the respondent's failure to disclose the identity of the foreign investor[50] or any other details of the proposed sale.

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49 Mr Peloso's 4th Affidavit, para 7.

50 Applicant's Skeletal Submissions, para 69(a).

51 One option that I proposed was for some part of the sum received from the sale (the quantum of which had yet to be decided) to be paid into court. At this stage, it was not entirely clear how much money the SE Group would receive from the sale. The proposal would obviate the need for the Mareva injunction and the Disclosure Orders.[51] In the circumstances, I adjourned the matter to 16 September 2019. This was to allow Ms Koh to take her clients' instructions and consider the workability of the proposal.

The 16 September hearing

52 During the hearing, Ms Koh informed me that Mr Peloso had conferred with the other stakeholders in the SE Group. The SE Group was willing to set aside "cash consideration" of up to $1,605,452.53 from the sale of the majority stake in SEEAPL by way of payment into court.

53 Counsel for the applicants, Ms Jennifer Sia ("Ms Sia"), requested that the Mareva injunction remain in place until payment was made into court. Ms Koh, however, informed me that the deal would not go through if a Mareva injunction was in force. To overcome this, I granted the Mareva injunction with a *proviso* so that the sale could go ahead pending the payment of a sum of approximately $1.86 million (a revised figure from Ms Koh's proposal) into court ("the Enjoined Sum")). This sum represented the alleged quantum of damages arising from Menrva's counterclaim against SEPL, interest accruing from the date of the liability judgment and various legal costs. The Mareva injunction would be discharged with immediate effect upon the payment of the Enjoined Sum into court.

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[51] Minute Sheet ("MS") dated 12 September 2019.

54 The parties were to work out the precise terms of the draft order for the Mareva injunction. I decided not to grant the Disclosure Orders at this stage. This was to give the respondents some breathing space to successfully carry out the deal with the foreign investor.[52]

55 The parties were unable to agree on the terms of the draft order. I therefore fixed a hearing on 24 September 2019 to finalise the terms of the Mareva injunction.

The 24 September hearing

56 On 24 September 2019, the terms of the Mareva injunction were finalised. During the hearing, counsel for the respondents, Mr Daniel Liu ("Mr Liu"), informed me that the foreign investor had become concerned about contingent liabilities arising from the Mareva injunction. Mr Liu told me that the initial amount of cash consideration proposed by the foreign investor had not taken into account these contingent liabilities.[53]

57 In response, I informed parties that I would make the Disclosure Orders if the proposed acquisition did not go ahead and the Enjoined Sum was not paid into court.

The 22 October hearing

58 On 22 October 2019, I granted the Disclosure Orders which formed the subject of the respondents' application for leave to appeal.

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[52] Minute Sheet dated 16 September 2019.

[53] Minute Sheet dated 24 September 2019.

59 As it turned out, the proposed deal for the acquisition of SEEAPL's majority stake did not go through. Apparently, RCMA had found out the foreign investor's identity and alerted it to the Mareva injunction. However, Mr Liu acknowledged that it was "still possible that the deal may go through" in the future.[54]

60 I had indicated to the respondents during the earlier hearings that I was minded to grant the Disclosure Orders. Mr Liu stated that the respondents were willing to accept the Disclosure Orders being made against the corporate entities. Mr Liu, however, requested that no order be made against Mr Peloso on the ground that his only foreign asset was allegedly located in Canada. Ironically, the fact that Mr Peloso's foreign asset was confined to Canada, even if true, would have made it easier for him to comply with the Disclosure Orders. I thus granted substantially all the orders sought by the applicants.

61 The full set of Disclosure Orders were as follows:[55]

> 1. The [respondents] must inform the [applicants] in writing at once of all their assets whether in or outside Singapore, whether in their own name or not and whether solely or jointly owned, and whether the [respondents] are interested in them legally, beneficially or otherwise, giving the value, location and details of all such assets. The information must be confirmed in an affidavit which must be served on the [applicant's] solicitors within 10 days of 22 October 2019. In addition:
>
> (a) For the purpose of this order, the [respondent's] assets include any asset in which the [the respondents] have the power, directly or indirectly, to dispose of or deal with as if it were its own. The [respondents] are to be regarded as having such power if a third party holds or controls the asset in accordance with its direct or indirect instructions [**Worldwide Disclosure Order**]; and

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54 Minute dated 22 October 2019.

55 Order of Court dated 22 October 2019.

> (b) In particular, the [respondents] must state in the affidavit and provide documents to evidence:
>
> (i) full details of what has happened to [SEPPL's] 30% share of the FSC Payments received in the OCBC Account. If such sums (of part thereof) have been transferred by [SEPPL] into another bank account, to the best of the [respondents'] knowledge and belief, whether the said sum remains in that bank account, whether it has been further transferred into another bank account and if so, the date of the transfer and details of the account to which it has been transferred, or whether it has been utilized in other manner and if so, the purpose for which the funds have been used [**FSC Disclosure Order**];
>
> (ii) reasons for [SEPPL] transferring a sum of S$6,091,555.39 from the OCBC Account to the DBS Account from 27 November 2018 to 17 December 2018 when the RCMA Injunction (as defined at paragraph 33 of [Mr Chan's] 15th Affidavit) was still in place, and whether such transfer was carried out with [RMCA's] or the Honourable Court's consent [**RCMA Disclosure Order**];
>
> (iii) full details of how the trading loss of S$6,995,755.78 owed by [SEPPL] to [Kashish] was incurred; and
>
> (iv) full details of how [Kashish] got to know about the existence and details of the DBS Account [**Kashish Disclosure Orders**].
>
> 2. The [respondents] must inform [Menrva] and [Mr Chan] in writing at once and in any event no later than two (2) weeks prior to executing any definitive agreements for the Proposed Acquisition (as defined in HC/ORC 6465/2019) that the [respondents] are proceeding with the Proposed Acquisition [**Acquisition Disclosure Order**].
>
> 3. the costs of the application be costs in the cause of HC/AD 6/2019.

62 I also ordered that the disclosure affidavits be sealed.

My decision on the Disclosure Orders

63 On 22 October 2019, the respondents sought leave to appeal against my decision to grant the Disclosure Orders ancillary to the Mareva injunction. The respondents also sought a stay of execution.

64 During the course of the four hearings, the respondents raised several arguments. It was contended that the Disclosure Orders were wider than necessary to police the Mareva injunction. The respondents submitted that the assets ordered to be disclosed exceeded the sum restrained under the Mareva injunction. Ms Koh also highlighted the difference between the Disclosure Orders and Form 7 of the Supreme Court Practice Directions ("the PD").[56] In particular, the formulation "beneficially or otherwise" used in the Worldwide Disclosure Order was not contained in Form 7. The respondents argued that there was a breach of the PD as the applicants had failed to state on affidavit any justification for the departure from Form 7.[57]

Law on Disclosure Obligations

Preliminary remarks

65 I begin by reminding myself of the four important points made by Justice Mummery in the ground breaking decision of *TSB Private Bank International SA v Chabra and another* [1992] 1 WLR 231 at 241:

> I bear in mind four preliminary but important points. I first take note of the wide terms of section 37(1) of the Supreme Court Act 1981 [equivalent to s 4(10) of the Civil Law Act (Cap 43, 1999 Rev Ed) ("CLA") (see below at [81])] which empowers the court to grant an injunction in all cases where it appears to the court to be just and convenient to do so. Secondly, the whole basis of the Mareva injunction is that, where a plaintiff has shown a good arguable case, the court, in order to protect the plaintiff's interests, has jurisdiction in a proper case to grant an interlocutory injunction restraining a defendant from disposing of or dissipating his assets, where the refusal of such an injunction would involve a real risk that a judgment obtained by the plaintiff would be stultified and remain unsatisfied.

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56 Minute Sheet dated 12 September 2019; Bundle of Authorities, Tab 2.

57 Minute Sheet dated 12 September 2019.

> Thirdly, the jurisdiction of the court should be exercised with caution and great care should be taken not to be oppressive to the persons restrained, either in the carrying on of a business or in the conduct of everyday life.
>
> *Fourthly, the practice of the court on the grant of Mareva injunctions is an evolving one which has to remain flexible and adaptable to meet new situations as and when they arise.*
>
> [emphasis added]

66 In my view, in granting Mareva relief (including ancillary disclosure orders) regard must be had to how wily a defendant has been in devising schemes to dissipate, dispose or put its assets out of reach to evade judgment. To meet the objectives of Mareva relief and confront the challenges posed by devious schemes, the Mareva relief must remain flexible and be capable of being tailored accordingly.

67 The CA in *Petromar Energy Resources Pte Ltd v Glencore International AG* [1999] 1 SLR(R) 1152 ("*Petromar*") set out the purpose of disclosure orders. In brief, disclosure orders are merely ancillary to a Mareva injunction for the plaintiff to determine the location of a defendant's assets and take appropriate steps to preserve them pending the trial (at [21]). The CA elaborated on disclosure orders in *Bouvier* at [101]:

> [The ancillary disclosure order] aims to give the plaintiff a snapshot of the defendant's assets at the time of disclosure. This is to enable the plaintiff to police the injunction and ensure that the defendant's assets are kept at the steady state which the Mareva injunction seeks to preserve. After all, if the court is satisfied that there is a real risk of dissipation, then it generally follows, as a matter of logic, that there should be a capability to police the Mareva injunction granted. The ancillary asset disclosure order is thus an integral part of the court's Mareva injunction and an ordinary adjunct to a Mareva injunction: *Grupo Torras SA v Shiek Fahad Mohammed Al Sabah* (16 February 1994); *Motorola Credit Corporation v Cem Cegiz Uzan* [2002] EWCA Civ 989 at [28]–[29].

68 A recent decision by Andrew Ang SJ in *Sea Trucks Offshore Ltd and others v Roomans, Jacobus Johannes and others* [2019] 3 SLR 836 ("*Sea Trucks*") was instructive. The plaintiffs had obtained a Mareva injunction against two defendants. The injunction prohibited the two defendants from dealing with their assets up to a certain value. The two defendants filed affidavits but only partially disclosed their assets. Thereafter, the defendants applied to vary their disclosure obligations on the basis that the disclosed sums were sufficient for the purpose of the Mareva injunction. In dismissing the application to vary the disclosure obligations, Ang SJ set out several important principles in relation to ancillary disclosure obligations:

(a) A plaintiff is given no interest, security or priority in assets that are the subject of a Mareva injunction. Thus, the only way to allow the plaintiff to effectively police the Mareva injunction is by giving the plaintiff *sufficient* information about the location and details of the defendant's assets (at [45]).

(b) As a general rule, a defendant will be required to make disclosure of *all* its assets even though the assets restrained are limited to those of a certain value (at [52]).

(c) Even where the defendant has disclosed assets sufficient to meet the sums restrained by the Mareva injunction, there remains utility in requiring the defendant to disclose information relating to the defendant's other assets. As the information contained in the disclosure affidavits is often a "rough and ready" figure, it would be unrealistic to expect that the value of such assets would be so close to the true value of the defendant's assets such that no other assets are required to be

disclosed in order to preserve the efficacy of the Mareva injunction (at [46]).

(d) It is often the case that a Mareva injunction contains exceptions that allow the defendant to apply some of the restrained sums of money towards ordinary expenses and legal fees. Thus, where the defendant only discloses assets that are equal in value or slightly above that restrained by the Mareva injunction, this could reduce the injunction's efficacy (at [49]).

(e) As a wide disclosure obligation is typically required to give a Mareva injunction teeth, such widely-phrased disclosure obligations are the norm rather than the exception, and have been described as being the "standard terms" on which a disclosure obligation is made (at [52]).

69 Ang SJ stated that it is only where disclosure orders go further than requiring the defendant to disclose all its assets that the court has found such obligations to be overly onerous (at [53]), such as in *Wallace Kevin James v Merrill Lynch International Bank Ltd* [1998] 1 SLR (R) 61 ("*Wallace*") and *Petromar*.

70 In *Petromar*, Glencore had obtained an *ex parte* interim Mareva injunction against Petromar, together with ancillary disclosure orders. The CA determined that there was an *abuse* of the ancillary orders for disclosure, as it appeared that Glencore was not merely seeking to ascertain the amount of money in Petromar's bank account, but also to determine the movement of money to and from the bank account to assist it in its claims against Petromar and another entity, Metro (at [21]). Two further observations may be made about *Petromar*. The first is that the disclosure orders had been granted by the

Judge below at an *early* stage in the proceedings, indeed on the date the action was commenced. The second is that the disclosure orders were granted on an *ex parte* basis. In this regard, the court declared that there was no reason why such extensive orders could not have been granted at an *inter partes* hearing instead (at [19]).

71 In *Wallace*, a bank had obtained a worldwide Mareva injunction and an accompanying disclosure order against an employee. The disclosure order at issue was in the following terms (at [34]):

> … the defendants shall give their consent in writing within seven (7) days of the service of the order to be made hereon to all of their bankers providing to the plaintiffs or their solicitors *any information* relating to their bank account or accounts and/or copies of their bank statements. [emphasis in original]

72 Similarly, as in *Petromar*, the CA in *Wallace* noted that the disclosure order granted was too wide. In effect, it directed the appellant and his wife to consent to the respondents obtaining any information relating to the accounts they had with his banks. The CA also observed that the only purpose of the disclosure order was to "aid" the Mareva injunction by policing any subsequent disposal of funds. In the circumstances, the court was of the view that opportunity ought to be given to the appellant and his wife to disclose the assets they had at the time, which would include the credit balances in their bank accounts. Requiring the appellant and his wife to provide letters of consent to allow the respondents to obtain information was "going too far" (at [34]).

73 Apart from the width of the order, it is important to flag the CA's concern regarding the *stage of the proceedings* at which the disclosure order was made. In this respect, the CA expressly remarked that the order was

"unjustified" at the time it was made. Like *Petromar*, the disclosure order was made on the date of the commencement of the action (at [3] and [34]).

74 The above cases concerned disclosure orders that were granted *pre*-judgment. I now turn to examine decisions involving post-judgment Mareva injunctions and disclosure orders, given that the present case involved the grant of a post-judgment Mareva injunction and ancillary disclosure orders.

75 Judith Prakash J (as she then was) held in *Hitachi Leasing (Singapore) Pte Ltd v Vincent Ambrose and another* [2001] 1 SLR(R) 762 ("*Hitachi Leasing*") that the two conditions for the issue of a post-judgment Mareva injunction are as follows. First, a real risk of the debtor dissipating or disposing of assets with the intention of depriving the creditor of any satisfaction of its debt. Second, that the injunction must act as an aid to execution (at [19]). *Hitachi Leasing* did not, however, concern disclosure orders. *Hitachi Leasing* was cited with approval by the CA in *The State-Owned Company Yugoimport SDPR (also known as Jugoimport-SDPR) v Westacre Investments Inc and other appeals* [2016] 5 SLR 372 at [120].

76 Citing *Gidrxslme Shipping Co Ltd v Tantomar-Transportes Marittimos Lda* [1995] 1 WLR 299 ("*Gidrxslme Shipping*"), Belinda Ang J in *Astro Nusantara International BV and others v PT Ayunda Prima Mitra and others and another matter* [2016] 2 SLR 737 noted at [89] that a post-arbitral award Mareva injunction could be made as an aid to execution on the basis that there was a real risk that the party against whom the award had been made may dispose of its assets to avoid execution.

77 In *Gidrxslme Shipping*, the owners of a chartered ship had obtained a Mareva injunction against the charterers to enable enforcement of arbitration

awards that had already been made. The assets that were ordered to be disclosed covered assets that were not subject to the Mareva injunction, given that the injunction was confined to *assets within England* while the ancillary disclosure orders required the charterers to *disclose their assets worldwide*. Colman J made the following observations regarding the different considerations applicable to pre-judgment and post-judgment disclosure orders (at 310):

> … However, in *Derby & Co. Ltd. v. Weldon* Neill L.J., at pp. 94–95, reaffirmed, albeit obiter, his conviction expressed in *Ashtiani v. Kashi [1987] Q.B. 888* that disclosure orders should be coextensive with the scope of the *Mareva* injunction to which they were ancillary. It is to be observed, however, that both in *Ashtiani v. Kashi* and in *Derby & Co. Ltd. v. Weldon (Nos. 3 and 4)* the courts were concerned with *pre-judgment* orders which included *Mareva* injunctions. The orders for disclosure were therefore orders ancillary to those injunctions. There was no question of there being any other order in support of which a disclosure order could be justified. Where, by contrast, one has the position that a judgment has been already obtained or an award made and where a *Mareva* injunction in aid of execution is justified, **the jurisdiction to make a disclosure order arises both as a power ancillary to and in support of the injunction and independently of the injunction as a power in support of the execution of the judgment or award**. It follows that, whereas it may on the facts of the case in question be inappropriate to extend the *Mareva* injunction to assets outside the jurisdiction — and it is clear from the two authorities cited that such extensions are likely to be rarely justified — *very different considerations may apply to disclosure orders in aid of execution. …* [original emphasis in italics; emphasis added in bold]

78 Colman J took into account considerations such as the charterers claiming not to have any assets in England and the existence of outstanding and unsatisfied arbitral awards against them (at 311–312):

> In the present case *the charterers who have failed to honour the first award, and who have subsequently failed to honour the second award, appear to carry on business in Lisbon and are incorporated in Portugal. They claim to have no assets within the jurisdiction except funds held on account of costs by their solicitors and claims in a London arbitration against an English*

> *company in relation to which an award is apparently imminent. … The charterers have no bank accounts here. Nothing is known of what assets they have abroad beyond those arbitration claims or the whereabouts of those assets.*
>
> *In view of the outstanding and unsatisfied awards against the defendants amounting in aggregate to U.S.$357,349.47 plus interest and costs, the first award having been converted into a judgment for U.S.$284,392.47, it is, in my judgment, entirely just and convenient in aid of execution* of those awards that the charterers should be required to tell the owners where their assets are, whether inside or outside the jurisdiction of the English courts.
>
> [emphasis added]

79 Although the Mareva injunction was confined to assets within England, the disclosure orders granted extended to assets outside England. These broader disclosure orders were justified on the basis that they were *in aid of execution*. In this regard, the court observed that the charterers had no bank accounts in England, nor was anything known about their assets abroad. These factors made it necessary for the court to make the wider disclosure orders. Thus, *Gidrxslme Shipping* makes it clear that while a disclosure order in support of a pre-judgment Mareva is usually coextensive with the scope of a Mareva injunction, this is not *necessarily* the case for a post-judgment Mareva.

80 In *Vitol SA v Capri Marine Limited and others* [2010] EWHC 458 (Comm), Justice Tomlinson elaborated on the purpose of post-judgment disclosure orders at [37]:

> (a) At the post-judgment stage, a disclosure order has a dual purpose. It serves both to assist in the identification or ascertainment of assets that were subject or potentially subject to the freezing order *and* to assist the judgment creditor in locating assets against which enforcement may be sought.

(b) Pursuant to s 37(1) of the Senior Courts Act 1981 (c 54) (UK) ("the Senior Courts Act 1981"), the court has a freestanding power to order disclosure after judgment in order to render the judgment effective, in the sense of being capable of enforcement. In this regard, "it is the policy of the law to assist persons in the position of the plaintiffs to obtain the fruits of their judgments" (*Maclaine Watson & Co Ltd v International Tin Council (No.2)* [1989] 1 Ch 286 at 301).

(c) Different considerations apply between pre and post-judgment situations. In a post-judgment context, it is just and convenient that the judgment creditor should normally have all the information needed to levy execution of the judgment anywhere in the world (per Colman J in *Gidrxslme Shipping* at p 312EF).

81 Prakash J (as she then was) observed in *R1 International Pte Ltd v Lonstroff AG* [2014] 3 SLR 166 that "[t]he language of s 4(10) of the [CLA] is very similar to that of s 37 of the Senior Courts Act 1981" (at [44]). It has been recognised that s 4(10) of the CLA is the source of the statutory power to grant interlocutory relief, including Mareva injunctions (see [45]). Thus, the power to grant disclosure orders ancillary to a Mareva injunction, like the power to grant a Mareva injunction, originates from s 4(10) of the CLA.

Analysis

82 I set out the various orders of the Mareva injunction granted on 24 September 2019:[58]

1. (a) The [respondents] must not:

[58] Order of Court on 24 September 2019 (Amendment No.1).

(i) remove from Singapore any of their assets which are in Singapore whether in their own name or not and whether solely or jointly owned up to the value of SGD 1,853,795.95 [the Enjoined Sum]; or

(ii) in any way dispose of or deal with or diminish the value of any of their assets whether they are in or outside Singapore whether in their own name or not and whether solely or jointly owned up to the same value and whether the [respondents] are interested in them legally, beneficially or otherwise. For the purpose of this Order, the [respondents'] assets include any asset in which the [respondents] have the power, directly or indirectly, to dispose of or deal with as if it were their own. The [respondents] are to be regarded as having such power if a third party holds or controls the asset in accordance with its direct or indirect instructions.

(b) This prohibition includes the following assets, in particular

(i) Any monies in the following bank accounts:

…

(ii) All sale proceeds or any capital received from the proposed acquisition described at paragraphs 18 to 19 of the 1st affidavit of [Mr Peloso] filed on 21 August 2019 in HC/OS 1060/2019 ("Proposed Acquisition");

(iii) All payments received by [SEPPL] from the Energy Market Authority / Singapore Power Services Ltd pursuant to the Enhanced Forward Sales Contract Scheme ("FSC Scheme" and "FSC Payments");

(iv) shares in and the property and assets of [SESPL], [SEEAPL], [SEDSL], and [SEPPL], which [SEPL] own and/or control either directly or indirectly:

(v) [SEPL's] intellectual property, including patents no. 10201501229P, 10201406833U and 10201405341Y;

(vi) [SEDSL's] intellectual property, including patents no. 11201904220V, 11201800608R, 11201708394S, 11201703224R, 11201703223T, 1020190746Y, 10201802478X, 10201711089V, 10201609493P, and 10201502972V;

(vii) [Mr Peloso's] shares in [SEPL], Sun Electric (SG) Pte. Ltd., Sun Electric IO Pte. Ltd. and Sun Electric Energy Assets II Pte. Ltd.;

(d) If the total unencumbered value of the [Respondents'] assets in Singapore exceeds the [Enjoined Sum], the [Respondents]

> may remove any of those assets from Singapore or may dispose of or deal with them so long as the total unencumbered value of their assets still in Singapore remains not less than the [Enjoined Sum]. If the total unencumbered value of the [Respondents'] assets in Singapore does not exceed the [Enjoined Sum], the [Respondents] must not remove any of those assets from Singapore and must not dispose of or deal with any of them, but if they have other assets outside Singapore, [the Respondents] may dispose of or deal with those assets so long as the total unencumbered value of all their assets whether in or outside Singapore remains not less than the [Enjoined Sum].
>
> …
>
> **EXCEPTIONS TO THIS ORDER**
>
> …
>
> 5. This order does not prohibit the [respondents] from proceeding with and completing the Proposed Acquisition save that:
>
> a. [the respondents] shall notify the [applicants] within (2) Business days once:
>
> (i) Definitive agreements for the Proposed Acquisition has been signed; and
>
> (ii) Completion for the Proposed Acquisition has taken place…
>
> [emphasis omitted]

83 Apart from the above, the Mareva injunction contained the usual exceptions and terms.

84 As mentioned above at [61], there were five separate categories of Disclosure Orders:

(a) the Worldwide Disclosure Order;

(b) the FSC Disclosure Order;

(c) the RCMA Disclosure Order;

(d) the Kashish Disclosure Orders; and

(e) the Acquisition Disclosure Order.

General

85 I first detail some of the broader reasons for granting the Disclosure Orders before turning to more specific considerations.

86 In my judgment, all the Disclosure Orders granted were necessary to police the Mareva injunction. I elaborate below at [91]–[108] on how the Disclosure Orders were necessary to police the Mareva injunction.

87 The next point is that the present case was unlike both *Wallace* and *Petromar*. The present case involved disclosure orders granted at a late stage in the proceedings, after liability had been established but before damages had been assessed. Both the disclosure orders in *Wallace* and *Petromar* had been granted at an early stage of proceedings. Further, there was no indication, as in *Petromar*, that the disclosure orders were sought for an extraneous purpose. In my judgment, the primary reason the respondents sought the accompanying disclosure orders was to police the Mareva injunction. Further, unlike *Petromar*, the disclosure orders here were granted only after four *inter partes* hearings. Parties here had every opportunity to be heard.

88 The respondents had claimed that the quantum of the total assets ordered to be disclosed far exceeded the contingent liability that was due as a result of the liability judgment. As a general rule, a defendant will be required to make disclosure of *all* its assets even though the assets restrained are limited to those of a certain value (*Sea Trucks* at [52]). There was no reason to depart from this

general rule. It was also observed in *Motorola Credit Corporation v Cem Cegiz Uzan and others* [2003] EWCA Civ 752 ("*Motorola Credit Corporation*") that a defendant is ordinarily required to disclose all its assets above a certain value. Otherwise, a defendant may selectively pick which assets to disclose. In doing so, the defendant may choose to disclose assets that are the least available or accessible to the claimant for the purpose of execution (*Motorola Credit Corporation* at [146]). This was something that I bore in mind when granting the Disclosure Orders.

89 SEPPL's assets were listed in Mr Peloso's affidavit in support of its JM application (see above at [11]), but these consisted only of two patents and a sum of money. Moreover, there was no valuation attached to these two patents. Further, the respondents failed to point to the existence of any other liquid assets in Mr Peloso's fourth affidavit. This case was unlike *Sea Trucks*, where the defendants had at least provided partial disclosure indicating the availability of a certain amount of assets. Here, it was *not at all known* whether there would be sufficient assets to satisfy the contingent liability.

90 In the alternative, I was of the view that, as in *Gidrxslme Shipping*, all of the Disclosure Orders were justified as *aids to execution*. First, very little information was provided on the quantum and location of the respondents' assets, either in Singapore or worldwide. Second, the respondents' conduct in the Kashish matter, as well as Mr Peloso's flippant attitude towards an order of court, *ie*, the RCMA Injunction, suggested a substantial risk that the respondents would take evasive steps to avoid execution. I have also highlighted above at [19]–[51] other matters (evidencing a real risk of dissipation) which indicated that there would be difficulties in execution.

Worldwide Disclosure Order

91 The scope of the Worldwide Disclosure Order was necessary to police the Mareva injunction.

92 I noted above at [68] the general observation in *Sea Trucks* that a plaintiff is given no interest, security or priority in the assets that are the subject of a Mareva injunction. It follows from this that the only way for a disclosure order to assist in the effective enforcement of a Mareva injunction is for the plaintiff to be given sufficient information about the location and details of the assets. Therefore, where the court grants disclosure orders covering the same assets that are restrained under the Mareva injunction, such disclosure orders are regarded as normal. Two decisions illustrated this point. The first is *Teo Siew Har*, where the court had directed that disclosure be made in respect of the defendants' worldwide assets after a worldwide Mareva injunction was imposed (at [6]). The second is *Lyu Yan @ Lu Yan v Lim Tien Chiang and others* [2019] SGHC 10 ("*Lyu Yan*"), in which Choo Han Teck J granted a worldwide disclosure order to accompany the worldwide Mareva injunction.

93 Upon examining Orders 1(a)(i) and 1(a)(ii) of the Mareva injunction and the Worldwide Disclosure Order, it can be seen that both sets of orders refer to assets "in or outside Singapore, whether in [the respondents'] own name or not and whether solely or jointly owned, and whether the [respondents] are interested in them legally, beneficially or otherwise" and assets which the respondents "have the power, directly or indirectly, to dispose of or deal with as if it were its own". The only difference between the assets restrained under Orders 1(a)(i) and (ii) and those subject of the disclosure obligations in the Worldwide Disclosure Order was that Orders 1(a)(i) and (ii) restrained movement of assets up to the sum of S$1,853,795.95 (see also Order 1(d)) while

the Worldwide Disclosure Order required the respondents to disclose all their assets (unlimited by any sum). As I have pointed out above, there is a general rule that a defendant will be required to make disclosure of *all* its assets even though the assets restrained are limited to a certain value (*Sea Trucks* at [52]). Cogent reasons were provided by Ang SJ to justify this general position (see *Sea Trucks* at [45]–[52]). It remained necessary for the Worldwide Disclosure Order to be unrestricted by a fixed sum in order to police the accompanying Mareva injunction. It must also be highlighted that the orders granted in both *Teo Siew Har* and *Lyu Yan* were not restricted to a fixed sum.

RCMA and Kashish Disclosure Orders

94 Given the width of the Mareva injunction, I found that the RCMA and Kashish Disclosure Orders did not go beyond the assets restrained, and were therefore necessary for its policing. The width of the Mareva injunction becomes apparent upon examination of its precise terms.

95 Order 1(a)(ii) restrained the respondents from disposing of assets "whether in their own name or not and whether solely or jointly owned up to the [value of S$1,853,795.95] and *whether the [respondents] are* ***interested*** *in them* ***legally, beneficially or otherwise*** … For the purpose of this Order, *the [respondents'] assets include any asset in which [the respondents] have the power, directly or indirectly, to dispose of or deal with as if it were their own.* ***The [respondents] are to be regarded as having such a power if a third party holds or controls the asset in accordance with its direct or indirect instructions***" [emphasis added].

96 I have noted above at [9] that Order 1(a)(ii) was not being challenged in the application for leave to appeal. I highlight two cases that illustrate the wide-

ranging nature of this type of order. *JSC BTA Bank v Solodchenko* and others [2010] EWCA Civ 1436 ("*Solodchenko*") held that the formulation "legally, beneficially or otherwise" covered assets which are held by the defendant as a trustee or nominee for a third party (see also Prakash J in *STX Corp v Jason Surjana Tanuwidjaja and others* [2014] 2 SLR 1261 at [20]). In *JSC BTA Bank v Ablyazov (No 10)* [2015] UKSC 64, the defendant had entered into a number of unsecured loan agreements providing for large sums of money to be made available to him. Although these borrowings would not have been covered under the standard form of a freezing order, the inclusion of the phrase "[f]or the purpose of this Order the [defendant's] assets include any asset which they have power, indirectly or indirectly, to dispose of, or deal with as if it were their own" in the terms of the freezing order granted meant that they were now covered. *The upshot of this is that the respondents are restrained from disposing of a wide range of assets under Order 1(a)(ii)*.

97 In brief, the RCMA and Kashish Disclosure Orders required the respondents to disclose the reasons SEPPL transferred a sum of about S$6 million from the joint OCBC Account to the DBS Account, as well as full details of SEPPL's trading losses with Kashish, and how Kashish came to find out about the details of the sum of money in SEPPL's DBS Account.

98 On the basis of the available evidence, which consisted of an Order of Court dated 4 February 2019[59] and correspondence between SEPPL and Kashish's solicitors on the alleged claims under the CFDs, I was not convinced that SEPPL *genuinely* owed a sum of money to Kashish. In the circumstances, it may be inferred that the respondents were "interested in [the approximately

[59] Mr Peloso's 4th Affidavit, p 382.

S$6 million] … *beneficially or otherwise*". There was admittedly a degree of evidential difficulty involved in ascertaining the precise nature of this interest. The S$6 million could have been "transferred" to Kashish through the garnishment process with the intention on SEPPL's part to retain a beneficial interest in the sums under the trust. On the basis of the affidavit evidence, I was satisfied that there was at least a "good arguable" case that the money belonged beneficially to SEPPL. Thus, the Kashish and RCMA Disclosure Orders were co-extensive with the assets restrained under Order 1(a)(ii).

99 Order 1(a)(ii) also restrained the movement of assets that a third party controlled on the direct or indirect instructions of the respondents. Based on the suspicious circumstances that I have described above (at [20]–[37]), I was of the view that, in the alternative, there was a "good arguable" case that the $6 million was directly or indirectly controlled by the respondents. In requiring the respondents to disclose the "full details" of what happened to the approximately S$6 million, as well as the reasons for the transfer of the $6m, the RCMA and Kashish Disclosure Orders did not go further than the Mareva injunction. *Put differently, the two Disclosure Orders did not require the respondents to provide information regarding assets that were not already the subject of the Mareva injunction*. It was therefore necessary to make the RCMA and Kashish Disclosure Orders for the applicants to police the Mareva injunction.

100 In addition, I reiterate the principle in *Gidrxslme Shipping* that while a disclosure order in support of a pre-judgment Mareva is usually coextensive with the scope of a Mareva injunction, this is not necessarily the case for post-judgment disclosure orders. I have explained that the Disclosure Orders were granted as aids to execution (see above at [90]). It follows that *even if* the RCMA and Kashish Disclosure Orders were *broader* than the Mareva injunction, they

were justified.

101 There were other reasons why I believed the RCMA and Kashish Disclosure Orders to be justified.

102 Apart from the standard disclosure orders, the court has the power to make additional orders against a party that is the subject of a Mareva injunction to give discovery and answer interrogatories. The disclosure orders assist in, among other things, (a) determining the existence, nature and location of the respondents' assets or of proceeds of fraud; and (b) clarifying questions of title concerning assets (*Singapore Civil Procedure 2020* vol 1 (Chua Lee Ming gen ed) (Sweet & Maxwell, 10th Ed, 2020) at para 29/1/69; see also *Civil Procedure: Volume II* (Sweet & Maxwell, 2018) at para 15-74). Although the RCMA and Kashish Disclosure Orders were labelled as "disclosure" orders, they were also in effect interrogatories. In my judgment, both orders were necessary to achieve the above two objectives, given the evidential difficulty in determining the nature of the interest in the S$6 million that was garnished by Kashish.

103 In *Lyu Yan*, the plaintiff had opened a private wealth account with BNP Paribas and sought to transfer US$3m in RMB from her personal RMB account in China to one of her personal bank accounts in Singapore through the assistance of the defendants. As it turned out, the bulk of the plaintiff's money disappeared (at [11]) and the plaintiff accordingly sought various orders pending trial. The plaintiff was granted a Worldwide Mareva injunction (at [14]). Crucially, the defendants were made to state on affidavit what had happened to the money initially transferred to their bank accounts (at [14(c)]). This question was presumably to assist in determining the location of the

plaintiff's assets to aid the policing of the Mareva injunction. In my judgment, the RCMA and Kashish Disclosure Orders served a similar function. They were directed at determining the location of assets that potentially fell within the scope of the Mareva injunction.

104 *Lyu Yan* illustrates another important point. Choo J had found a "real risk" of dissipation of assets. He inferred this from the fact that the entire sum of S$3m had been dissipated through the bank accounts of all the defendants and someone known as "Allan". He also found the explanations given by the defendants to be "inadequate and unconvincing" (at [12]). In making the disclosure order directed at finding out information about the missing S$3m, the court was in effect granting an ancillary disclosure order that sought to determine the true state of affairs as regards the circumstances which led to its finding of a "real risk" of dissipation. In this case, I have set out above at [19]–[51] the matters leading to my determination that there was a "real risk" of dissipation. This included the RCMA Injunction and involvement of Kashish. As in the disclosure order in *Lyu Yan*, both the RCMA and Kashish Disclosure Orders were directed at finding out further information that formed the basis of my finding of a "real risk" of dissipation. Hence, I was of the view that the making of the RCMA and Kashish Disclosure Orders was justified.

105 Finally, it must be noted that both Orders were not onerous obligations. The Orders required only information readily available and entirely within Mr Peloso's personal knowledge. After all, Mr Peloso had acknowledged that he had provided Kashish with the DBS Account number from which the sum of money was garnished. No prejudice would be occasioned if the respondents were required to comply with the RCMA and Kashish Disclosure Orders. Both orders must be seen in the light of the suspicious circumstances surrounding the

transfer of money from the OCBC Account to the DBS Account, as well as the insufficient evidence concerning Kashish.

FSC Disclosure Order

106 The facts concerning the FSC Payments have been set above at [20]–[21]. The FSC Disclosure Order required the respondents to provide full details of what had happened to SEPPL's share of the FSC Payments received in the OCBC Account and, where the payments had been transferred out of the account, various details surrounding those transfers.

107 The FSC Disclosure Order was necessary to police the Mareva injunction. As I have pointed out above at [96], Orders 1(a)(i) and 1(a)(ii) encompassed a very broad range of assets. Like the assets ordered to be disclosed pursuant to the RCMA and Kashish Disclosure Orders, the assets under the FSC Disclosure Order fell within the scope of Order 1(a)(ii). Further, like all of the above Disclosure Orders, this order was also justified as an aid to execution. Given my finding that some of the FSC Payments had been transferred in anticipation of execution, it was necessary for me to make this order.

Acquisition Disclosure Order

108 The Acquisition Disclosure Order required the respondents to inform the applicants two weeks in advance of executing any definitive agreements in respect of the foreign investor's proposed acquisition of the majority stake in SEEAPL. The Mareva injunction granted contained an exception, such that the respondents were not prohibited from proceeding with and completing the proposed acquisition involving SEEAPL's shares. This *proviso* was granted to

permit the sale of SEEAPL's majority stake and allow the Enjoined Sum to be paid into court (see above at [53]). Under the Mareva injunction, the respondents were required to furnish notice to the applicants within two business days once a definitive agreement has been signed and after completion has taken place. The Acquisition Disclosure Order required notice before the execution of any definitive agreements. It was only right that notice also be provided before any agreements were signed. If something was amiss (for *eg*, if it appeared that the impending sale was not *bona fide*), the applicants could take the necessary steps to protect their interests.

Non-compliance with the Practice Directions

109 The respondents submitted that the Disclosure Orders were wider than the orders set out in Form 7 of Appendix A of the PD. According to para 42(3) of the PD, Form 7 must be used unless the Court considers that there is "good reason" for adopting a different form. Based on the reasons set out above at [85]–[108], I was of the view that there were good reasons for the departure from the usual form.

110 Paragraph 42(3) of the PD also provides that any departure from the terms of the prescribed form (*ie*, Form 7) should be justified by the applicant in its supporting affidavit. While the applicants did not specify precisely why each and every departure from Form 7 was justified, it was in my judgment clear from Mr Chan's affidavit why the applicants had thought that the additional disclosure orders, *viz*, the FSC, RCMA, Kashish and Acquisition Disclosure Orders, were justified. I also noted that such disclosure orders requiring the disclosure of parties' beneficial assets (similar to Order 1(a)(ii)) have been granted before (see *Lyu Yan* at [14(b)]; *Solodchenko* at [46]; see also *STX Corp*

at [20] per Prakash J). In the circumstances, there were good reasons for me to depart from the terms of the prescribed Form.

Conclusion on the Disclosure Orders

111 For the above reasons, I granted the applicants the Disclosure Orders.

My decision on the application for leave to appeal

112 On 1 November 2019, the respondents filed Summons No 5537 of 2019 seeking leave to appeal against my decision on 22 October 2019. A hearing was fixed for 5 December 2019. On this date, counsel for the applicants, Ms Sia, informed me that the applicants had discovered that assets had been dissipated in breach of the Mareva injunction. Ms Sia sought to tender an affidavit detailing the same. I allowed the admission of the affidavit. I also permitted the respondents to file a reply affidavit and adjourned the hearing to 17 December 2019. Both parties filed written submissions on the question of leave to appeal.

113 On 17 December 2019, I refused the respondents' application for leave to appeal.

114 The principles for granting leave to appeal are well established (see *Lee Kuan Yew v Tang Liang Hong and another* [1997] 2 SLR(R) 862 ("*Lee Kuan Yew*") at [16]). An applicant must establish one or more of the following grounds:

(a) a *prima facie* case of error;

(b) a question of general principle to be decided for the first time; or

(c) a question of importance upon which further argument and a decision of a higher tribunal would be to the public advantage.

115 The respondents made two broad submissions.

116 First, the respondents contended that my decision on 22 October 2019 disclosed a *prima facie* error as the Disclosure Orders went "over and above what [was] necessary for policing the *mareva* [*sic*] injunction".[60] This was for the following reasons. The respondents argued that the Disclosure Orders substantially departed from the standard form set out in Form 7 of the PD. As I have explained, each of the Disclosure Orders was co-extensive with the assets restrained under the Mareva injunction. In particular, Orders 1(a)(i) and 1(a)(ii) restrained the respondents from removing their assets on a *worldwide* basis. As an additional ground, disclosure orders granted ancillary to a *post*-judgment Mareva injunction served a secondary purpose of acting as *aids* to execution. Thus, the Disclosure Orders were also justified on this basis. As for the point on the departure from Form 7 of the PD, there was nothing which prevented me from departing from Form 7, so long as I was of the view that there were good reasons to do so.

117 During the hearing, counsel for the respondents, Ms Eden Li ("Ms Li"), submitted that there had been an erroneous exercise of discretion in granting the Worldwide Disclosure Order as one of the entities in the SE Group, SEEAPL, had assets that substantially exceeded the Enjoined Sum.[61] In my view, the "Independent Practitioner's Review", which Ms Li relied on, was cynically redacted to avoid scrutiny of the true financial health of SEEAPL. In any case,

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60 Plaintiff's Submissions in Summons 5557 of 2019 ("PS in SUM 5557"), paras 26–40.

61 Minute Sheet dated 17 December 2019.

the principle in *Sea Trucks* required a party subject to a Mareva injunction to make disclosure of *all* its assets even though the assets restrained are limited to those of a certain value (at [52]).

118 Second, the respondents submitted that there was a question of general principle to be decided for the first time and a question of importance upon which further argument and a decision of a higher tribunal would be to the public advantage (*ie*, both limbs (b) and (c) of the test in *Lee Kuan Yew*). The question posed was this: in circumstances where non-parties to the underlying suit have been joined solely for the purposes of injunctive relief, what is the precise scope of ancillary disclosure orders that can and should be granted against such non-parties?[62]

119 In my view, this submission was unmeritorious. I noted that the respondents did not challenge the court's power or jurisdiction to make disclosure orders against third parties. Although the respondents' question was couched as one of general principle, it appeared, on closer inspection, to be a fact-specific one. The question was formulated as "what is the *precise scope*" of the ancillary disclosure order (where third parties have been joined to the suit for injunctive relief). Naturally, the determination of the scope of the disclosure orders was fundamentally a fact-sensitive exercise, depending on the overall circumstances of each case. The guiding principle in determining the width of an ancillary disclosure order is whether it is necessary to police the accompanying Mareva injunction. This was well established by the CA in *Bouvier* and *Petromar*. I also observed that wide-ranging disclosure orders have been directed against third parties before. In *Teo Siew Har*, the third party wife

62 PS in SUM 5557, para 44.

had been required to file an affidavit setting out her assets, whether located in Singapore or elsewhere, under the terms of the worldwide Mareva injunction (at [6]).

120 *Teo Siew Har* made clear that the court may direct a third party to provide information on all of its assets both in Singapore and worldwide if there is a Mareva injunction in place (at [6]). The Worldwide Disclosure Order was thus uncontroversial. The more "unusual" orders were therefore the FSC, RCMA and Kashish Disclosure Orders.

121 In respect of the latter orders, the applicants submitted that there was, in effect, no live question to deal with as these disclosure orders were not truly directed at the third parties to the suit. The applicants submitted that the additional orders under para 1(b) of the Disclosure Orders related to SEPPL, which was a party to the underlying suit.[63]

122 In the main, I accepted this submission. This was an alternative reason to the reason stated at [119] for dismissing the application for leave to appeal.

123 The orders were, on a literal reading, directed at all of the respondents (Order 1(b) of the Disclosure Orders). However, they were in substance and in effect directed at *SEPPL*. This was because it was *SEPPL* that possessed the information relating to the FSC, RCMA and Kashish Disclosure Orders. The FSC Disclosure Order directed information to be provided on affidavit regarding what had happened to *SEPPL's* share of the FSC Payments. Likewise, the RCMA and Kashish Disclosure Orders required SEPPL to provide information about why the approximately S$6m was taken out of *SEPPL's*

63 Defendant's Submissions in SUM 5557 ("DS in SUM 5557"), para 82.

account and how and why *SEPPL* had incurred losses with Kashish. There was only *one* situation in which an order was directed at the third party entities. If and when the FSC Payments that had been received in the OCBC Account were transferred by SEPPL into another bank account, the respondents (including SEPPL) would be obliged to disclose, to the best of their knowledge and belief, whether those sums remained in the bank accounts to which the FSC Payments had been transferred to and whether those sums had been further transferred into another bank account; if so, the date of the transfer and details of the account to which the transfer had been made, or whether those sums had been used in any other manner and if so, the purpose of usage. Thus, save for this limited scenario, the question of the precise scope of the disclosure orders directed against third parties did not arise.

124 Given the above, there was no question of general principle to be decided for the first time or question of general importance upon which further argument would be to the public advantage.

125 I also add that the evidence indicated that the respondents were dragging their feet in an attempt to avoid complying with the Disclosure Orders. The evidence in Mr Chan's affidavit dated 5 December 2019 showed that Mr Peloso had no intention of complying with orders of court.

My decision on the application for stay of execution

126 I heard the respondents' application for a stay of execution of the disclosure orders on 17 December 2019. I refused it and ordered that disclosure be made within seven days of the hearing.

127 It is trite that an appeal does not automatically operate as a stay of execution. The general position is that the court will not deprive a successful party of the fruits of its litigation until an appeal is determined, unless the unsuccessful party can show special circumstances to justify it (*Strandore Invest A/S v Soh Kim Wat* [2010] SGHC 174 at [7]).

128 The respondents submitted that a stay should be granted in order to prevent their appeal from being rendered nugatory. Further, they argued that they would suffer irreparable prejudice if a stay was not granted.[64]

129 Two cases are instructive on the question of whether a stay should be granted in cases involving disclosure orders that are ancillary to a Mareva injunction.

130 The first is the decision by Belinda Ang Saw Ean J in *OCM Opportunities Fund II, LP and others v Buhan Uray (alias Wong Ming Kiong) and others* [2004] 4 SLR(R) 74 ("*OCM Opportunities*"). The defendants had affirmed two sets of affidavits in compliance with disclosure orders that were granted ancillary to a Mareva injunction. The plaintiffs applied to cross-examine the defendants on their affidavits. This order was granted. The defendants appealed against Ang J's order for cross-examination and sought a stay of the said order. She refused to stay the hearing of the application to cross-examine the defendants pending the determination of the appeal. Recognising that a Mareva injunction would not be effective without disclosure, she held that the prejudice to the defendants would be "of a lesser order than the prejudice that

64 PS in SUM 5557, paras 52 and 53.

the plaintiffs may suffer if they are unable to police the Mareva order for some time". At [46]–[47], Ang J stated:

> 46 I accept that an order for cross-examination before the appeal is determined is potentially prejudicial to the defendants. If the defendants are successful in their appeal, they would have been subjected to cross-examination on affidavits of assets which would have been wrongly ordered. Above all, it would not be possible to undo and put right the invasion of their privacy. Damage would have been done if the order for cross-examination had been complied with before the appeal to set aside the order was heard.
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> 47 Whilst the defendants may have some prospect of success on appeal the plaintiffs have, on the other hand, put up a good arguable case on fraud and dissipation of assets. Unfairness lies only in the possibility that the claim may be ill-founded, and I have taken this into account in my assessment of the merits of the plaintiffs' application to cross-examine. If their claim and hence the order for a worldwide injunction turns out to be ill-founded, the defendants will be able to recover their costs and damages suffered, if any, from the undertaking as to damages which the plaintiffs have been ordered to fortify. Weighing all the factors, there are grounds for saying that whilst the prejudice alluded to by Mr Sreenivasan is not illusory, the prejudice to the defendants is of a lesser order than the prejudice that the plaintiffs may suffer if they are unable to police the Mareva order for some time. It is an imposition to subject a defendant to cross-examination, but a Mareva injunction in normal circumstances simply cannot be effective without that disclosure.

131 It has been remarked that cross-examination is a powerful and valuable weapon for testing the veracity of a witness (*Mechanical and General Inventions Company, Limited and Lehwess v Austin and the Austin Motor Company, Limited* [1935] 1 AC 346 at 359). Multiple and sometimes probing questions are directed at the deponent of the affidavit. It may be said that an order for cross-examination is more invasive than an order requiring disclosure to be made on affidavit. Thus, the degree of prejudice that may potentially be faced by the respondents here, who are only required to satisfy disclosure obligations, was of a lesser degree than what the defendants in *OCM*

Opportunities experienced. Moreover, unlike *OCM Opportunities*, the claim here has already been established and the Mareva injunction was not the subject of a challenge. Given the absence of a challenge to the Mareva injunction, there was no risk that the Mareva injunction might be lifted such that there would no longer be a need for ancillary disclosure obligations. The main thrust of the respondents' submissions for leave to appeal was that the disclosure obligations were too wide, and *not* that the orders were entirely defective. As a result, even if an appeal was allowed against the disclosure orders, there would only be a change in their scope. This was a factor that I took into account in determining the degree of prejudice the respondents were likely to suffer if a stay of execution was refused.

132 Another weighty factor that I took into account was the importance of the Disclosure Orders in ensuring that the applicants could police the Mareva injunction. In this regard, the second decision to consider was *Motorola Credit Corporation v Cem Cegiz Uzan* [2002] EWCA Civ 989. The defendant applied to set aside the worldwide freezing order and a stay of the disclosure orders. Justice Waller refused the stay of the ancillary disclosure orders. His reasoning centred on the importance of disclosure orders in policing the accompanying freezing order. He explained at [27]–[29]:

> [27] … But the fact that *the* ***making of a disclosure order is a very important part of the Mareva jurisdiction is made clear in a number of authorities,*** the most helpful of which so far as this case is concerned is *Grupo Torras SA v Sheikh Fahad Mohammed Al-Sabah* (CA, 16.2.94) … That decision was upheld by the Court of Appeal. There are helpful dicta of Steyn LJ when he identified the submissions of Mr Andrew Smith QC (as he then was) …
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> …
>
> [28] Steyn LJ also recognised that undoubtedly there would be prejudice to the Sheikh in that case if he was forced to disclose

> his assets and ultimately managed to set aside the proceedings for want of jurisdiction, but Steyn LJ emphasised that that was not anywhere near as much prejudice as would be suffered if the claimant was unable to police the Mareva injunction for some time. The emphasis in that case, as has been the emphasise [*sic*] in this case by Mr Cran, is that whereas at first sight it looks as though the court in dealing with suspending the supply of this information for only a short period of time, that is until the hearing of the summons to set aside the freezing order on 17 July, ***the reality is that that decision is likely to be appealed to the Court of Appeal, and indeed it may well go to the House of Lords. The reality is that if it were suspended now, it would be suspended for a very great period of time.***
>
> [29] … The factors that weigh with me are these. ***First, although it is an invasion of privacy to force any party to disclose assets, a freezing order in normal circumstances simply cannot be effective without that disclosure.*** Once one has the situation which did exist in this case, which was that on 13 June it was accepted that the freezing order should continue, then prima facie David Steel J is right in saying that a disclosure provision would be the normal provision so that that freezing order can be properly policed and be effective.
>
> [emphasis added]

133 While I accepted that any stay, if granted in this case, would not operate for as long as it might in England (assuming that an appeal was allowed sometime in the future), the fact remained that the Disclosure Orders were necessary for the applicants here to police the Mareva injunction. As stated by Waller J, a Mareva injunction "simply *cannot be effective* without [the accompanying] disclosure" [emphasis added].

134 Further, the need to *police* the Mareva injunction assumed heightened importance in this case because of the troubling matters disclosed in Mr Chan's affidavit tendered on 5 December 2019. In summary, the evidence showed that Mr Peloso had diluted his shareholdings in SEPL. It was thus necessary for the stay to be refused to prevent possible future breaches of the Mareva injunction.

135 Given that the respondents had thus far failed to comply with the Disclosure Orders, the applicants resorted to a more rudimentary method of "policing" the Mareva injunction. According to the applicants, they did this by carrying out business profile searches of the applicants from time to time.[65] After carrying out a search on 2 December 2019, the applicants discovered that a new entity, known as UHP Holdings Pte Ltd ("UHP") was now the holder of about 51% of the shares in SEPL. It should be noted that Mr Peloso was the shareholder of about 95.01% shares in SEPL as at 1 August 2019.[66] Mr Chan stated on affidavit that SEPL had issued 113,274 ordinary shares to UHP at an undervalued price of S$0.185 when its usual share price was S$4.08[67] for a total sum of S$21,000.[68] Mr Peloso did not refute this specific allegation in his reply affidavit.

136 The applicants also claimed that there was a link between UHP and Kashish. As stated above at [36], Mr Peloso alleged that Kashish was a wholly owned subsidiary of "Kushal Ltd", an Indian public listed company. A news article produced by the applicants showed an apparent connection between Kushal Ltd and UHP, the company that had purchased Mr Peloso's shares in SEPL. An extract of the article stated:[69]

> Kushal Ltdhas [*sic*] informed BSE that the meeting of the Board of Directors of the Company is scheduled … to consider and approve To deliberate on the Letter of Intent received from ***UHP Holdings Pte Ltd., Singapore …. for investment in Kushal Limited for an amount of USD 140 Million***…

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65 Mr Chan's 16th Affidavit, para 25.

66 Mr Chan's 20th Affidavit, para 7.

67 Mr Chan's 20th Affidavit, para 10.

68 Mr Chan's 20th Affidavit, para 12.

69 Mr Chan's 20th Affidavit, p 29.

[emphasis added]

137 Mr Peloso's reply affidavit, which sought to explain the above events, was long on claims and short on details. The explanation provided was also completely unsatisfactory. In Mr Peloso's view, the sale of shares was simply not relevant to Summons No 5557 of 2019 (*ie*, the leave to appeal application).[70] Mr Peloso also stated that the S$21,000 was only "upfront consideration" and that there were anticipated further investments to be made by, among others, UHP, up to the tune of US$100 million.[71] However, no documentary evidence was provided in support of this rather exaggerated claim. On the relationship between UHP and Kashish (through the entity Kushal Ltd), Mr Peloso said that he had been informed by UHP that no such investment was made into Kushal Ltd.[72] Again, there was no documentary evidence in support. For example, correspondence with a contact from UHP could have been provided. This was not done.

138 All of these remained of grave concern.

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70 Mr Peloso's 7th Affidavit, para 6.

71 Mr Peloso's 7th affidavit, para 13.

72 Mr Peloso's 7th Affidavit, para 14.

139 Balancing the degree of prejudice that was likely to be faced by both parties, I held that a stay of execution should not be granted.

Dedar Singh Gill
Judicial Commissioner

Koh Swee Yen, Daniel Liu, Andrew Pflug and Eden Li (WongPartnership LLP) for the first and second plaintiffs and first to third and fifth defendants in counterclaim;
Jennifer Sia Pei Ru Mrs Jennifer Nicolau, Rezvana Fairouse d/o Mazhardeen and Ng Lip Chih (NLC Law Asia LLC) for the first and second defendants and plaintiff in counterclaim.