

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

[2024] SGHC 164

Originating Application No 1259 of 2023 (Summonses Nos 309 and 716 of 2024)

Between

- (1) Three Arrows Capital Ltd
- (2) Christopher Farmer (solely in his capacity as a duly appointed joint liquidator of Three Arrows Capital Ltd)
- (3) Russell Crumpler (solely in his capacity as a duly appointed joint liquidator of Three Arrows Capital Ltd)

... Applicants

And

- (1) Kyle Livingston Davies
- (2) Kelly Kaili Chen

... Respondents

GROUND OF DECISION

[Civil Procedure — Mareva injunctions — Whether threshold of good arguable case has been met by joint liquidators seeking freezing order]

[Civil Procedure — Mareva injunctions — Whether joint liquidators applying for freezing order demonstrated real risk of dissipation of assets by subject of freezing order]

[Civil Procedure — Mareva injunctions — Whether joint liquidators applying for freezing order without notice complied with duty to give full and frank disclosure of material information]

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Three Arrows Capital Ltd and others
v
Davies, Kyle Livingston and another

[2024] SGHC 164

General Division of the High Court — Originating Application No 1259 of 2023 (Summonses Nos 309 and 716 of 2024)
Philip Jeyaretnam J
24 May 2024

28 June 2024

Philip Jeyaretnam J:

Introduction

1 The liquidators of Three Arrows Capital Ltd (“the Company”), a company incorporated in the British Virgin Islands (“BVI”) sought an interim freezing order against the Company’s co-founder and his wife (both on the basis that she held assets as his nominee and on the basis of claims made against her personally). The application was made in support of proceedings in the BVI where a worldwide freezing order had been granted. The liquidators did so without notice to the respondents. It was granted. The wife, Ms Kelly Kaili Chen (“Ms Chen”), then sought to discharge that freezing order. I heard the parties on that discharge application. I dismissed her discharge application and her related application for a stay of her obligation to make ancillary disclosure of information regarding her assets.

2 Being dissatisfied, Ms Chen has applied for permission to appeal against my decision. I now provide my reasons for my decision.

Factual context of dispute

3 The Company used to be a hedge fund engaged in the trading and investing of cryptocurrencies and other digital assets.¹

4 The Company was co-founded by two persons – Mr Zhu Su (“Mr Zhu”) and Mr Kyle Livingston Davies (“Mr Davies”) – in 2012, both of whom served as its directors at the time of the Company’s liquidation.² The wife of Mr Davies, Ms Chen,³ owned shares in the Company’s feeder fund, Three Arrows Fund Limited (“TAFL”),⁴ which had been transferred to her without consideration in or around 2020 by Mr Davies.⁵

5 The Company was placed into liquidation in June 2022 by the judiciary of the British Virgin Islands (“the BVI Proceedings”).⁶ The Company is the first applicant in the present proceedings and the second and third applicants are its joint liquidators who were appointed in the BVI Proceedings (“the Liquidators”). The BVI Proceedings have also been recognised as foreign main proceedings by the High Court of Singapore since August 2022.⁷

¹ First Affidavit of Mr Russell Crumpler in HC/OA 1259/2023 dated 19 December 2023 (“1RC”) at paras 10–11.

² 1RC at paras 11–12.

³ Second Affidavit of Ms Kelly Kaili Chen in HC/OA 1259/2023 dated 14 March 2024 (“2KKC”) at para 5.

⁴ Fourth Affidavit of Mr Russell Crumpler in HC/OA 1259/2023 dated 28 March 2024 (“4RC”) at para 33; 1RC at para 13.

⁵ 2KKC at paras 20–22.

⁶ 1RC at para 14.

⁷ 1RC at para 15 and pp 3237–3239.

6 In the course of the BVI Proceedings, the Liquidator made a number of claims against Mr Zhu, Mr Davies, and Ms Chen. The claims against Ms Chen can be grouped into two categories – first, claims that Ms Chen allegedly owes over US\$4.5m to the Company (*ie*, the claims for US\$4.286m and S\$500,000 (or around US\$373,051.83) respectively) (“the Debt Claims”);⁸ and secondly, claims to set aside a purported credit of US\$70m given by the Company to both Mr Zhu and Ms Chen as a redemption of TAFL shares to be set-off against the loans owed by them to the Company and said to be liable to be set aside as an undervalue transaction (“the Undervalue Transactions Claims”).⁹

7 Additionally, the Liquidators made a claim against both Mr Davies and Mr Zhu worth around US\$1.078bn in respect of their alleged insolvent trading which they were said to have engaged in whilst they still controlled the Company’s business (“the Insolvent Trading Claims”).¹⁰

8 Moreover, the Liquidators also alleged in the BVI Proceedings that Ms Chen held her shares in TAFL as a nominee for Mr Davies.¹¹ Ms Chen denied this and averred that Mr Davies gifted those shares to her outright and that she owns them beneficially.¹²

⁸ 1RC at pp 56–57 and 121–122; Applicants’ Written Submissions in HC/OA 1259/2023 dated 17 May 2024 (“AWS”) at para 44(b).

⁹ 1RC at pp 55, 57 and 121; AWS at para 44(c).

¹⁰ AWS at para 44(d); 1RC at p 122; First Affidavit of Nicholas Brookes in HC/OA 1259/2023 dated 19 December 2023 (“1NB”) at p 19.

¹¹ AWS at para 45; 1RC at pp 163–164 and 179–187.

¹² 2KKC at paras 22–23.

9 On 18 December 2023, the Liquidators obtained a worldwide freezing order over the assets of Mr Zhu, Mr Davies, and Ms Chen in the course of the BVI Proceedings.¹³

Procedural history of OA 1259

10 On 19 December 2023, the Liquidators filed HC/OA 1259/2023 (“OA 1259”), seeking a domestic injunction to freeze the Singapore assets of Mr Davies and Ms Chen in aid of the BVI Proceedings under s 4(10A) of the Civil Law Act 1909 (2020 Rev Ed) (“CLA 1909”). They filed a similar application against Mr Zhu in HC/OA 1258/2023 that same day.

11 In respect of Ms Chen, the Liquidators sought orders restraining her from disposing of her Singaporean assets up to the value of US\$1.082bn, specifically naming a Good Class Bungalow in Singapore to be restrained (“the Singapore Property”), and an ancillary order for her to disclose on affidavit the Singapore assets in her name to enforce the freezing order.¹⁴

12 On 19 December 2023, the Liquidators filed HC/SUM 3814/2023 (“SUM 3814”). This was their application for an interim freezing order to be granted on an urgent basis without notice. On 20 December 2023, Chan Seng Onn SJ (“the Judge”) heard SUM 3814 and granted it at a without notice hearing from which Mr Davies and Ms Chen had been absent (see the Judge’s order in HC/ORC 5969/2023 dated 20 December 2023 (“the Singapore Freezing Order”)).

¹³ 1RC at para 6(b).

¹⁴ 1RC at paras 3(c) and 6.

13 After the Singapore Freezing Order was served on Ms Chen, she filed HC/SUM 309/2024 (“SUM 309”) on 2 February 2024 and HC/SUM 716/2024 (“SUM 716”) on 14 March 2024.

14 SUM 716 was Ms Chen’s application to set aside the Singapore Freezing Order, while SUM 309 was her application to stay her ancillary disclosure obligations under the Singapore Freezing Order. Mr Davies did not file a discharge application of his own. The parties were agreed before me that the two applications stood and fell together. Accordingly, I assessed them on that basis.

15 SUM 309 and SUM 716 came up for hearing before me on 24 May 2024. I heard parties’ oral submissions and dismissed both summonses, fixing costs for both summonses in the aggregate amount of \$25,000 in favour of the Liquidators together with reasonable disbursements.

16 I would add that, during the hearing, the Liquidators submitted that the determination of SUM 309 and SUM 716 should be deferred until the courts of the British Virgin Islands (BVI) jurisdiction had the opportunity to consider the applications filed by Ms Chen (and by Mr Zhu and Mr Davies) to discharge the worldwide interim freezing orders granted in the BVI Proceedings.¹⁵ I disagreed. It is true that the court would consider and give weight to reasons provided by the foreign court which has jurisdiction over the substantive claims when that foreign court makes decisions concerning a freezing order. Moreover, if the foreign court discharges its own worldwide freezing order, this would, ordinarily, lead to the discharge of freezing orders granted elsewhere in support of that original order. However, the question whether to defer the hearing of a

¹⁵ AWS at paras 35–36; 4RC at para 9.

discharge application pending the hearing of the equivalent discharge application in the foreign court is one of case management and judicial discretion. The potential costs-savings of awaiting the decision in the foreign court must be weighed against the prejudice to the person enjoined, whose freedom to deal with assets has been curtailed. Here, it would be some months before any decision in the BVI and so I concluded that I would hear and decide Ms Chen's applications without waiting for the BVI courts to hear and decide the equivalent applications there.

Issues

17 There were three main issues:

- (a) Whether the Liquidators had made out a good arguable case on the merits against Ms Chen;
- (b) Whether the Liquidators had shown a real risk of dissipation of assets by Ms Chen; and
- (c) Whether the Liquidators had complied with their duty to give full and frank disclosure to the Judge at the without notice hearing for the Singapore Freezing Order.

Issue 1: The Liquidators had made out a good arguable case on the merits against Ms Chen

Parties' submissions

A "good arguable case" based on the claims against Ms Chen in the BVI Proceedings (ie, the Debt Claims and Undervalue Transaction Claims)

18 The Liquidators' position was that they made out a good arguable case against Ms Chen on the Debt Claims and Undervalue Transaction Claims (see

at [6] above).¹⁶ They noted that the Company's own loan schedule recorded that Ms Chen owed the company more than US\$4.286m as of May 2022,¹⁷ and she withdrew S\$500,000 (or around US\$373,051.83) from the Company's bank accounts on 13 June 2022 on the basis of a purported unpaid redemption of her TAFL shares.¹⁸ These formed the factual substratum underlying the Debt Claims against Ms Chen.

19 The Liquidators said that Ms Chen's main rebuttal against this was that she validly redeemed her TAFL shares for around US\$70m when she put in a valid request to redeem US\$70m worth of shares in TAFL, the feeder fund of the Company. That request was filed the day that the Company filed an application in the BVI Proceedings for joint liquidators to be appointed (27 June 2022) and while the Company was already insolvent.¹⁹ It was also an undervalue transaction to Ms Chen liable to be set aside.²⁰ In any event, they argued that even if the redemption was valid, Ms Chen could not set-off the sums owed by TAFL to her against the sums she owed to the Company.²¹

20 Ms Chen disagreed that there was a good arguable case in respect of either the Debt Claims or the Undervalue Transactions Claims. She claimed that the US\$70m redemption of her TAFL shares was valid and therefore the sums owed to her by the Company far exceeded the sums she may owe the Company in the Debt Claims.

¹⁶ AWS at para 46.

¹⁷ AWS at para 46(b).

¹⁸ AWS at para 46(f).

¹⁹ AWS at para 46(d)(i).

²⁰ AWS at para 44(c).

²¹ AWS at para 46(e).

21 She disagreed that she only made the redemption request in June 2022 when the Company was insolvent and an application had been filed to appoint joint liquidators over the Company. She argued that the request was made on 25 February 2022 before the Company had become insolvent,²² when she allegedly passed a physical copy of the redemption request to a Ms Zhang Ningxin (“Ms Zhang”) for her to pass it on to the fund administrator.²³ As the redemption request was valid, there was no good arguable case against her on either the Debt Claims or the Undervalue Transactions Claims.

A “good arguable case” based on the claims against Mr Davies (ie, the Insolvent Trading Claims) with Ms Chen holding assets as his nominee

22 The Liquidators also argued there was a good arguable case that Ms Chen was holding assets as a nominee for her husband, Mr Davies. This was relevant as they also had a larger claim, the Insolvent Trading Claims (see at [7] above), against Mr Zhu and Mr Davies for around US\$1.078 billion in the BVI Proceedings.²⁴

23 First, the Liquidators highlighted that Mr Davies’ disclosures in the BVI Proceedings showed that he has few assets in his own name despite holding high-ranking managerial positions in the Company and related entities.²⁵ Moreover, the Liquidators noted a pattern of Mr Davies transferring high-value assets to Ms Chen without consideration, including his transfer of the shares in TAFL to her in 2020 and a transfer of a villa in Dubai held in his sole name

²² Second Respondent’s Written Submissions in HC/OA 1259/2023 dated 17 May 2024 (“RWS”) at paras 58–59.

²³ 2KKC at para 54.

²⁴ AWS at paras 44–45 and 47.

²⁵ AWS at para 49(a).

(“the Dubai Villa”) to her sole name in August 2023.²⁶ They also pointed to the fact that, prior to the January 2020 transfer of the TAFL shares to Ms Chen, Mr Davies had sent an email to the Company’s fund administrator in December 2019, asking if it was possible to change his “investment in Class B to [his] wife’s name (without wiring funds in/out)”.²⁷

24 Moreover, the Liquidators argued that even after Mr Davies transferred the TAFL shares to Ms Chen, he continued to represent to the Company’s stakeholders that he would hold 25% of TAFL’s assets.²⁸ They also claimed that Ms Chen had a pattern of contributing towards the acquisition of assets which were placed into Mr Davies’ name, pointing to two in particular – the Dubai Villa, which they claimed was purchased using payments made by the Company to Ms Chen but acquired solely by Mr Davies,²⁹ and the purchase of a superyacht using funds paid by the Company to Mr Zhu and Ms Chen, where news reports and internal emails indicated that it was Mr Davies and Mr Zhu who wanted to acquire that superyacht instead.³⁰ They relied on this pattern to argue that there was a good chance that Ms Chen held the Singapore Property (see at [11] above) as a nominee for Mr Davies as well. They pointed to the fact that the Singapore Property was registered in her sole name, even though it was unclear how she was able to acquire the Singapore Property or take out loans for it without the involvement of Mr Davies.³¹

²⁶ AWS at paras 49(b)(i) and 49(b)(iv).

²⁷ 1RC at p 181.

²⁸ 4RC at para 35(c).

²⁹ 4RC at para 35(e).

³⁰ AWS at para 49(c)(i); 1RC at p 180.

³¹ 1RC at p 164.

25 Finally, the Liquidators pointed to an alleged ‘mirroring’ of transactions executed by Mr Zhu and Ms Chen in respect of their TAFL shareholdings. She executed redemptions, stock transfers, loans to the Company, *etc*,³² at or around the same times and in the same or similar quantities as Mr Zhu.³³ They argued that this is consistent with the co-founders Mr Zhu and Mr Davies acting together as principals to plan transactions respecting TAFL and the Company, with Ms Chen then executing those transactions as Mr Davies’ nominee.³⁴

26 Thus, the Liquidators argued that they had made out a good arguable claim that Ms Chen held assets as nominee for Mr Davies, against whom they had a good arguable claim in the form of the Insolvent Trading Claims.

27 Ms Chen argued that it is only in rare and exceptional cases that a court will injunct the assets of a third party on the basis of a good arguable claim against another defendant.³⁵ She argued that it is not enough for the Liquidators to mount a generalised claim that she holds assets as a nominee for Mr Davies. They must be able to point to specific assets and show that those particular assets are held not for her own benefit but for Mr Davies. Otherwise, properties which are obviously held by her absolutely and for her own benefit (like personal effects) would end up being wrongfully restrained by the Singapore Freezing Order for no good reason.³⁶

³² 4RC at para 35(d).

³³ 1RC at pp 179 and 186.

³⁴ 1RC at p 179; 4RC at para 35(d).

³⁵ RWS at para 46.

³⁶ RWS at paras 48 and 50.

28 In any event, Ms Chen argued that she was not Mr Davies' nominee and that she had rebutted all allegations of the Liquidators to the contrary.³⁷ On the transfer of the TAFL shares by Mr Davies to her without consideration in 2020, she argued that (a) Mr Davies gifted the shares to her to provide her economic security for her to give up her career to become a full-time homemaker,³⁸ and (b) the presumption of advancement applied such that she beneficially owns the TAFL shares unless the Liquidators could prove otherwise.³⁹

29 Ms Chen argued that the so-called 'mirroring' of transactions between her and Mr Zhu was explicable on the basis that she trusted the investment advice of Mr Zhu and acted on such advice regularly.⁴⁰

30 On the purchase of the superyacht, she averred that she did not act as Mr Davies' nominee with regards to that acquisition. Rather, the yacht was purchased for the respective families of her and Mr Zhu, and thus, she and Mr Zhu decided to use redemptions from their TAFL shares to purchase the yacht for their family members.⁴¹

31 Finally, she argued that she owns the Singapore Property outright and not as a nominee for Mr Davies. She averred that she is able to explain the source of funds for the acquisition of the Singapore Property, arising from a combination of a mortgage loan, loan repayments by the Company to her, sale proceeds from the sale of a prior property, and her own personal savings.⁴²

³⁷ RWS at para 52.

³⁸ RWS at para 53; 2KKC at paras 18–20 and 22.

³⁹ RWS at para 53; 2KKC at para 23.

⁴⁰ RWS at para 53; 2KKC at paras 31–33.

⁴¹ 2KKC at paras 35–37.

⁴² RWS at para 55; 2KKC at para 39.

32 Hence, Ms Chen argued that the Liquidators had failed to make out a good arguable case that she held assets as a nominee for Mr Davies, whether generally or in relation to specific assets. As such, whatever claims they may have against Mr Davies were, strictly speaking, irrelevant with regards to her.

My decision

The Liquidators made out a good arguable case on the merits of the claims against Ms Chen, namely, the Debt Claims and Undervalue Transaction Claims

33 I observed to parties at the hearing that there were aspects of the claims that were likely governed by BVI law. Counsel nonetheless proceeded on the basis that there was no material difference between BVI law and Singapore law for the purpose of the applications.

34 Ms Chen did not contest the Debt Claims themselves. Rather, she contended that the US\$70m redemption of her TAFL shares was valid and therefore the sums owed to her by the Company far exceeded the sums she may owe the Company in the Debt Claims. Thus, she had a defence by way of set-off arising from redemption of shares. Accordingly, the question I had to decide was whether the Liquidators have shown that there is a good arguable case that the redemption was not valid and so no set-off should be applied.

35 The threshold of a “good arguable case” in the context of the grant or discharge of a Singapore Freezing Order is not a high and exacting bar to cross. It does not require finding that the case will succeed on a balance of probabilities, merely that it is more than barely capable of serious argument (see *Bouvier, Yves Charles Edgar and another v Accent Delight International Ltd and another and another appeal* [2015] 5 SLR 558 (“*Yves Bouvier*”) at [36] and

JTrust Asia Pte Ltd v Group Lease Holdings Pte Ltd and others [2018] 2 SLR 159 (“*JTrust Asia*”) at [38]).

36 On this point, the Liquidators noted that the Company’s record shows that the request to redeem US\$70m worth of shares in TAFL, the feeder fund of the Company, was filed the day that the Company filed an application in the BVI Proceedings for joint liquidators to be appointed (27 June 2022) and while the Company was already insolvent.

37 Ms Chen contended that the request was made on 25 February 2022 before the Company had become insolvent. Her evidence concerning this earlier request was that she had handed the request personally to a Ms Zhang back in February 2022, with the instruction to hand it over to the fund administrator. When Ms Chen asked Ms Zhang about it afterwards in June 2022, Ms Zhang stated that she could not remember if she had given it to the fund administrator to be formally processed.⁴³ Hence, on her case, the redemption request was properly dated as of February 2022 even if it was only formally processed in June 2022. No evidence was provided of any timely follow ups by email or instant messaging between February and June 2022 that one would ordinarily expect given the size of the redemption and its likely importance to Ms Chen. This was not a short period of time, but one of about four months. The absence of follow up will require some explanation, and at this stage of the matter, it could certainly be said that there is a good arguable case that no such request was made on 25 February 2022, and that Ms Chen was therefore attempting to backdate her request to a time when the Company was not obviously insolvent in an attempt to show that it was validly redeemed. At the least, the Liquidators

⁴³ 2KKC at para 55.

were able to show a case that was more than capable of serious argument that the redemption request of Ms Chen was invalid.

The Liquidators made out a good arguable case that Ms Chen was holding assets as a nominee for Mr Davies

38 I found that there was a good arguable case that Ms Chen held her shares in TAFL as Mr Davies’ nominee, given the mirroring of executed transactions between her and Mr Zhu and the simple fact that Mr Davies had no other shares in TAFL in his name. The inference that Mr Davies adopted an arrangement of having his wife act as his nominee to hold his interests in TAFL and related entities is on the face of it compelling, and certainly at the least, more than seriously arguable. This meant that when she received moneys from TAFL or the Company arising from the interests held in her name, those receipts would be on Mr Davies’ behalf and beneficially owned by him. Such receipts, on her own submissions, were at least US\$9m.⁴⁴

39 Ms Chen’s contention that she was gifted those shares, both as a matter of parties’ intention and by operation of the presumption of advancement between husband and wife, is a potential defence that falls to be determined if or when the Liquidators have a judgment against Mr Davies that they seek to enforce against assets in Ms Chen’s name. Ms Chen did not bring before the court any clear contemporaneous evidence of the alleged intention to make a gift, resting on her averments on affidavit. The credibility of such assertions is a question of the weight to be attributed to her evidence and whether it is true or false on the balance of probabilities, which will be decided either way at the merits stage of this matter, but for the purposes of assessing whether a more than seriously arguable case has been made out against her, the court “must not

⁴⁴ RWS at para 31; 2KKC at para 30 (S/N 1).

try to resolve conflicts of evidence on affidavit” (*JTrust Asia* at [38]). Hence, at this stage of the matter, it sufficed for me to find that the Liquidators had a good arguable case that she held the TAFL shares as Mr Davies’ nominee.

40 I accepted that the freezing order should only lie against her up to the aggregate of the Debt Claims and additionally in respect of such assets in her name for which there was a good arguable case that Mr Davies had a beneficial interest. As noted at [18] above, the Debt Claims amounted to US\$4.286m and S\$500,000.

41 Ms Chen at the hearing before me argued that the Singapore Property was owned by her beneficially to the exclusion of Mr Davies. Had she convinced me of this argument, I would have considered whether the freezing order should have been varied to exclude it, if there were otherwise sufficient assets to meet the Debt Claims.

42 However, Ms Chen conceded that “S\$1 million of the down payment for the [Singapore Property] can be said to be attributable to the TAFL Shares.”⁴⁵ Given that there is a good arguable case that receipts from the TAFL shares beneficially belonged to Mr Davies, then this would mean that Mr Davies would have a beneficial interest in the Singapore Property, even if not a 100% interest. Ms Chen sought a discharge of the freezing order as a whole and did not articulate any particular form of variation of the freezing order, let alone one that would protect the Liquidators’ rights in relation to Mr Davies’ putative beneficial interest in the Singapore Property. While I note, for completeness, that she averred on affidavit that she wished for the Singapore Freezing Order

⁴⁵ RWS at para 55(a)(iv).

to be set aside or varied,⁴⁶ and that the Singapore Freezing Order's injunction quantum should not exceed the value of the Debt Claims against her,⁴⁷ she did not argue, in the alternative, for a variation on terms that would protect the Liquidators' more than seriously arguable rights in relation to assets she may hold as a nominee for Mr Davies, which bore relevance to the larger claims against Mr Davies personally (*ie*, the Insolvent Trading Claims). As such, there was no opportunity for me to assess the adequacy or sufficiency of the particular terms of any specific proposed variation, and whether it would prejudice the Liquidators' claims in the BVI Proceedings, given that the point was not taken up before me by Ms Chen.

43 Moreover, the Liquidators provided evidence of a number of dealings involving Ms Chen and Mr Davies, such as Mr Davies transferring the Dubai Villa to Ms Chen without consideration and the purchase of a yacht that Mr Davies had referred to in contemporaneous documents as a purchase by him and Mr Zhu but for which the Company paid by debiting against Mr Zhu's and Ms Chen's accounts with the Company (see at [24] above).⁴⁸ These assets are not in Singapore and so are not subject to this freezing order, but the relevance of this evidence is that analysing the potential beneficial interests in the Singapore Property should not be undertaken in isolation. There was on the evidence a web of dealings between Ms Chen and Mr Davies that were not explained or not compellingly explained and which support a good arguable case that Mr Davies beneficially owns the Singapore Property at least in part. Many of the rebuttals made by Ms Chen on affidavit – such as her claim that the yacht was purchased by her and Mr Zhu for their respective families – once again rested on an

⁴⁶ 2KKC at paras 3 and 11.

⁴⁷ 2KKC at paras 12–14.

⁴⁸ AWS at paras 49(b)(iv) and 49(c)(i).

examination of the credibility of her evidence at the merits stage. It was not necessary for me to make a positive finding of fact whether Ms Chen's rebuttals were true or false on the balance of probabilities, merely that the Liquidators had shown it to be more than capable of serious argument that Mr Davies owned some beneficial interest in the Singapore Property.

44 On the basis that there was a good arguable case that Mr Davies had some beneficial interest in the Singapore Property, it was not appropriate to exclude it from the injuncted assets.

Issue 2: The Liquidators had shown a real risk of dissipation of assets by Ms Chen

Parties' submissions

45 The Liquidators argued that they had also shown a real risk of asset dissipation by Ms Chen based on much of the same factual substratum they had relied on to make out a good arguable case against Ms Chen.

46 They pointed to the fact that Ms Chen tried to submit a request to redeem TAFL shares worth US\$70m on the same day that the Company filed its application to be placed in liquidation (27 June 2022) and unilaterally withdrew S\$500,000 from the Company's bank account, on the purported basis that it was part of the unpaid redemption proceeds owed to her, before her redemption request had even been processed by the Company's fund administrator.⁴⁹ They argued that this showed her eagerness to set-off a large sum against her debts to the Company at a time when the Company was already hopelessly insolvent.⁵⁰

⁴⁹ 4RC at para 49.

⁵⁰ 4RC at pp 40–41.

47 Moreover, they argued that, having shown Ms Chen to be a nominee of Mr Davies, there was correspondingly a risk of Mr Davies giving instructions to her to dissipate the assets she holds for him.⁵¹ As such, Mr Davies' conduct was relevant in assessing the risk of Ms Chen dissipating assets, including his alleged failure to cooperate with the Liquidators' investigation, his alleged failure to provide information and documents despite court orders,⁵² his alleged involvement in insolvent trading in the Company making up the Insolvent Trading Claims which included Mr Davies allegedly misrepresenting the Company's net asset value to at least three of its principal lenders,⁵³ and alleged deletion of emails from the servers of the Company before they were obtained by the Liquidators.⁵⁴

48 Ms Chen disagreed that the Liquidators showed a real risk of dissipation of assets by her. She argued that most of the Liquidators' evidence of an alleged risk of dissipation pertained to the conduct of Mr Zhu and Mr Davies and not her own conduct.⁵⁵

49 She argued that her conduct in relation to the disputed redemption of US\$70m worth of TAFL shares did not give rise to a risk of assets being dissipated since her claim under that disputed redemption was an asset entirely under the control of the Liquidators and Company.⁵⁶ Moreover, the Liquidators could not show that she had made any attempts to dispose of any of her assets in Singapore. In particular, she argued that she had made no attempt to dispose

⁵¹ AWS at paras 47, 49 and 52.

⁵² 1NB at pp 24–33.

⁵³ 1RC at pp 131–133.

⁵⁴ 4RC at pp 47–48.

⁵⁵ RWS at para 63.

⁵⁶ RWS at para 63(b).

of the Singapore Property, which was conduct inconsistent with her seeking to dissipate her assets to frustrate any legal proceedings.⁵⁷

My decision

50 I accepted that there is and was a real risk of dissipation, justifying the urgency of the application made without notice and the continuance of the Singapore Freezing Order. That injunction was intended to catch among other things moneys in bank accounts in her name. Given that there was a good arguable case that she would hold such moneys in whole or in part as Mr Davies' nominee, his conduct was relevant in assessing risk of dissipation because he could potentially give her directions as his nominee. Moreover, while Ms Chen asserted that she is separated from Mr Davies, the evidence suggests a considerable degree of cooperation and coordination between them. There were certainly ample grounds to infer that unless enjoined Mr Davies would seek to remove or dissipate assets to keep them out of the reach of the Liquidators and that similarly unless herself enjoined Ms Chen would cooperate with such efforts.

51 A real property such as the Singapore Property is, of course, much harder to dispose of quickly, but an injunction is still important to keep it within the potential pool of assets against which any BVI judgment might be enforced, given that there was a good arguable case that Mr Davies had some beneficial interest in it.

52 In addition to concerns about Mr Davies giving instructions to Ms Chen concerning his assets held in her name, the conduct of Ms Chen also gave rise to risks of removal or dissipation of assets. First, her taking loans in May 2022,

⁵⁷ RWS at para 64.

at a time when she would have known that the Company was insolvent and shortly before it entered into liquidation, suggested an attempt to remove assets from the reach of creditors in a series of cryptocurrencies transfers recorded in the Company's loan schedule. From this conduct of hers I inferred a real risk of dissipation by her if not injuncted.⁵⁸ The same applies to her attempt to redeem shares on the date of liquidation itself (27 June 2022). If the Liquidators eventually succeed in showing that the request was only made on that later date then it would follow that Ms Chen's reliance on the document purportedly dated 25 February 2022 was dishonest, namely by her attempting to backdate the redemption to a time when the Company was not hopelessly insolvent so as to falsely pass off an invalid redemption of shares as a valid redemption instead.

53 Of course, Ms Chen averred on affidavit that the request was made in February 2022, but as I have said, that assertion was belied by an absence of corroboration, including objective evidence of follow-up requests in the substantial interim period between February and June 2022 (see at [37] above). That was significant. In the round, I found that the evidence before me as to Ms Chen's conduct was sufficient to meet the threshold of "solid evidence" of a real risk of dissipation of assets by her (see *Bouvier* at [36] and [97]). Ms Chen's conduct certainly had a real and material bearing upon assessing a risk of dissipation here (see *Bouvier* at [93] and [95]), as it concerned actual or attempted withdrawals of assets or moneys from the Company when it was already insolvent or close to entering into liquidation, in the form of loans and putative redemptions of shares on her part. In the round, I found that a real risk of dissipation of assets by Ms Chen had been demonstrated on the totality of the evidence before me.

⁵⁸ IRC at pp 188 and 195–197.

Issue 3: The Liquidators had complied with their duty to give full and frank disclosure of all material facts to the Judge at the without notice hearing

Parties’ submissions

54 Ms Chen argued that the Liquidators defaulted on their duty of full and frank disclosure at the without notice hearing before the Judge in five material respects.

55 First, they misleadingly represented to the Judge that she had redeemed her TAFL shares for a sum of at least US\$109m when, in truth, the only true redemption was one for US\$9m worth of TAFL shares in September 2020,⁵⁹ whereas the others involved redemptions which were subsequently used to subscribe for shares in TAFL.⁶⁰

56 Second, they failed to draw the Judge’s attention to the fact that she had the benefit of invoking the presumption of advancement as against their claims of her holding assets as Mr Davies’ nominee merely because she received them without consideration.⁶¹

57 Third, they failed to tell the Judge that there was no evidence specific to Ms Chen to show any risk of a dissipation of assets by her.⁶² This overlapped with Ms Chen’s argument that the Liquidators could not show a real risk of a dissipation of assets on her part.⁶³

⁵⁹ RWS at para 31.

⁶⁰ 2KKC at para 30.

⁶¹ RWS at paras 34–36; 2KKC at para 66(a).

⁶² RWS at para 37.

⁶³ RWS at paras 61–65; 2KKC at para 66(c).

58 Fourth, in giving an undertaking to compensate the respondents for any losses flowing from the Singapore Freezing Order, they persuaded the Judge to agree to cap their undertaking without disclosing the amount of the Company’s net assets available to compensate for such losses. They stated that “about” US\$768m was available to give effect to the Liquidators’ undertaking but failed to draw the Judge’s attention to the fact that that was the *gross* value of the assets of the Company and the net value of the assets which can be liquidated to meet the undertaking (if need be) is significantly lower than that.⁶⁴

59 Finally, they failed to disclose that the ancillary disclosure obligation in the Singapore Freezing Order is more onerous than the equivalent obligation imposed in the freezing orders rendered in the BVI Proceeding. The latter only required Ms Chen to disclose her assets exceeding US\$10,000 in value but the Singapore Freezing Order applied for by the Liquidators in aid of the BVI Proceeding included no such limitation, yet they omitted to draw the Judge’s attention to the discrepancy.⁶⁵

60 Hence, these lapses of the Liquidators in respect of their duty of full and frank disclosure justified discharging the Singapore Freezing Order they had obtained on an interim basis.

61 The Liquidators disagreed that they suppressed material facts or painted a misleading picture to the Judge in any of the above respects. On the US\$109m worth of redemptions of TAFL shares (see at [55] above), they had not represented to the Judge that Ms Chen had depleted the Company or TAFL of US\$109m worth of assets or economic value. The reference to Ms Chen having

⁶⁴ RWS at paras 38–39.

⁶⁵ RWS at paras 41–43.

redeemed her TAFL shares for “at least” US\$109m was stated in the context of their highlighting the ‘mirrored’ transactions between Mr Zhu and Ms Chen as TAFL shareholders, which in turn reflected that many of those transactions involved ‘switches’ of TAFL shares to other classes of shares.⁶⁶

62 They also state that it was not material for them to disclose that Ms Chen could invoke the presumption of advancement because it is a presumption where evidence is lacking or inconclusive as to the true nature of a transfer, whereas the Liquidators’ case to the Judge, and before me, was that the evidence showed positively that Ms Chen was, in fact, Mr Davies’ nominee.⁶⁷ In any event, the Liquidators did disclose to the Judge that Ms Chen could argue that she is not a nominee of Mr Davies.

63 As for the Liquidators’ disclosure of the Company’s gross assets for the purposes of capping their undertaking, the Liquidators made it clear before me that the undertaking would be paid in priority to the creditors of the Company, hence the relevant figure was not the Company’s net assets but its gross assets.

64 Finally, it was not material that the BVI Proceedings’ interim freezing order had a minimum asset value for disclosure whilst the Singapore Freezing Order did not. The ancillary disclosure applied for in the Singapore Freezing Order followed a standard form which did not impose a minimum threshold for asset values to be disclosed.⁶⁸ More importantly, this discrepancy was not material as the Liquidators did not object to Ms Chen *only* disclosing assets worth more than US\$10,000 in alignment with the BVI Proceedings’ freezing

⁶⁶ 1RC at pp 179 and 186–187.

⁶⁷ AWS at paras 61–62.

⁶⁸ AWS at para 67.

order,⁶⁹ and the Liquidators repeated before me at the oral hearing that they had no objection to Ms Chen repeating her disclosures in the BVI Proceedings for the purposes of her complying with the ancillary disclosure order in the Singapore Freezing Order.

65 As such, the Liquidators fully complied with their duty to give full and frank disclosure of material facts to the Judge at the without notice hearing for the Singapore Freezing Order.

My decision

66 I was satisfied that there was no breach of the obligation to provide full and frank disclosure. Most of the points made by Ms Chen were peripheral and would not cross the materiality threshold, even if they had been left out of submissions made to the court. It is trite law that a fact would only be material to the without notice hearing if they were objectively material to enabling the Judge to make an informed decision on the issues to be decided at the without notice hearing on the Singapore Freezing Order application (see *The “Vasiliy Golovnin”* [2008] 4 SLR(R) 994 at [85]–[88] and *JTrust Asia* at [90(a)]).

67 There were two points that, if substantiated, would have been material on that standard. However, neither of them was made out before me. First, in relation to the undertaking as to damages, the Liquidators confirmed before me that the undertaking would be fulfilled in priority to creditors’ claims and hence it was the gross assets and not the liabilities or net asset figure that were material. Thus, referring to the Company’s gross assets at the without notice hearing was not misleading.

⁶⁹ AWS at para 67.

68 I also considered that counsel for the Liquidators did not misrepresent that Ms Chen received US\$109m in cash from the Company but correctly noted that there were redemptions of shares of that value (or more), which would include ‘switching’ the TAFL shares to other classes of shares. Moreover, the figure was mentioned in the context of demonstrating the ‘mirroring’ of transactions between Ms Chen and Mr Zhu to demonstrate that she held the TAFL shares as nominee for Mr Davies and not to show that she had taken assets out of the Company.⁷⁰

Conclusion

69 For all the above reasons, I dismissed Ms Chen’s applications made by way of SUM 309 and SUM 716 and awarded costs to the Liquidators.

Philip Jeyaretnam
Judge of the High Court

Leo Zhen Wei Lionel, Muhammed Ismail bin K.O. Noordin, Kwong Kai Sheng, T Abirami, Soon Wen Qi Andrea (WongPartnership LLP) for the applicants;
Saadhvika Jayanth (Advocatus Law LLP) for the first respondent (watching brief);
Pillai K Muralidharan SC, Luo Qinghui, Tao Tao and Yau Chun Shin (Yang Chunxun) (Rajah & Tann Singapore LLP) for the second respondent.

⁷⁰ 1RC at pp 179, 182 and 186–187.